

Texas Historical Statutes Project

1977 SUPPLEMENT
VOLUME 2

Revised Civil Statutes



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West's Texas Statutes and Codes

1977 Supplement
to
Compact Edition

Volume 2

Revised Civil Statutes

Topical Index

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PREFACE

This 1977 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 (1975), the Regular and First Called Sessions of the 65th Legislature (1977), and the text of changes in the Texas Constitution as adopted by the people at the Elections held on April 22, 1975 and November 8, 1977.

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.

New Codes

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

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

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

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

Disposition Tables, providing a means of tracing repealed subject matter into the new Codes, and detailed descriptive word Indexes, facilitating the search for specific provisions therein, are included following the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

Special Law Tables

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

PREFACE

Indexes

The index references following each Code 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

February, 1978

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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
1977	Regular	May 30, 1977	August 29, 1977
1977	1st C.S.	July 21, 1977	*

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

*

CITE THIS BOOK

Thus:

- West's Texas Const. Art. —, § —
- West's Texas Alcoholic Beverage Code, § —
- West's Texas Business and Commerce Code, § —
- West's Texas Education Code, § —
- West's Texas Family Code, § —
- West's Texas Natural Resources 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. —

†

REVISED CIVIL STATUTES

TITLE 1

GENERAL PROVISIONS

Article

1c. [Expired].

Art. 1a. Emergency Care; Relief from Liability for Civil Damages

No person shall be liable in civil damages who administers emergency care in good faith:

(1) at the scene of an emergency or in a hospital for acts performed during the emergency unless such acts are wilfully or wantonly negligent; provided that nothing herein shall apply to the administering of such care where the same is rendered for remuneration or with the expectation of remuneration or is rendered by any person or agent of a principal who was at the scene of the accident or emergency because he or his principal was soliciting business or seeking to perform some services for remuneration; and further provided that this section shall not apply to a person who regularly administers care in a hospital emergency room or to an admitting physician, or to a treating physician associated by the admitting physician, of the patient bringing a health care liability claim;

(2) as emergency medical service personnel not licensed in the healing arts unless the emergency care is wilfully or wantonly negligent whether or not remuneration is received for the rendition of the service or whether or not remuneration is expected as a result of the rendition of the service.

[Amended by Acts 1977, 65th Leg., p. 2054, ch. 817, § 21.02, eff. Aug. 29, 1977.]

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.

SPECIAL LAWS

Art. 2. Special laws: notice

Any person intending to apply for the passage of any local or special law shall give notice of such intention by having a statement of the substance of such law published once in some newspaper publish-

ed in the county embracing the locality to be affected by said law, at least thirty days prior to the introduction into the Legislature of such contemplated law.

[Amended by Acts 1977, 65th Leg., p. 1406, ch. 569, § 1, eff. Aug. 29, 1977.]

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. 41a. Public Accountancy Act of 1945

[See Compact Edition, Volume 3 for text of 1 to 4(a)]

Application of Sunset Act

Sec. 4b. The Texas State Board of Public Accountancy is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1979.

[See Compact Edition, Volume 3 for text of 5 to 25]

[Amended by Acts 1977, 65th Leg., p. 1834, ch. 735, § 2.017, eff. Aug. 29, 1977.]

¹ Article 5429k.

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

AERONAUTICS COMMISSION AND DIRECTOR OF AERONAUTICS

Art. 46c-3. Aeronautics Commission, Organiza- tion, Membership

[See Compact Edition, Volume 3 for text of
(a) and (b)]

(c) The Texas Aeronautics Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1981.

[Amended by Acts of 1977, 65th Leg., p. 1839, ch. 735, § 2.052, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 46c-6. Commission Powers and Duties

[See Compact Edition, Volume 3 for text of 1
and 2]

Subdivision 3. Air carriers.

[See Compact Edition, Volume 3 for text of
3(a) and (b)]

(b-1) The Commission by rule may establish reasonable classifications of air carriers. In the interest of limiting the scope of regulation, the Commission by rule may exempt any class of air carriers from any or all of the requirements of this Act or from any or all rules promulgated pursuant to this Act if the exemption is just and reasonable and is in the public interest.

[See Compact Edition, Volume 3 for text of
3(c) to 3(f)]

(g) No carrier may limit its liability for loss of or damage to freight or baggage unless the carrier files a limiting tariff with the Commission before the claimed loss or damage. The Commission shall establish specific liability limits under its rule-making authority.

[See Compact Edition, Volume 3 for text of 4
and 5]

Subdivision 6. Airports and Navigation Aids, Gifts, Leases.

[See Compact Edition, Volume 3 for text of 6(a)]

(b) Independently and additionally, the Commission shall be authorized to accept any grant, payment, or gift of moneys, funds or property made to it by any person, individual, firm, association, corporation, municipality, county, or other political subdivi-

vision of the state, or from the United States, or any department or agency thereof, as to which the donor has prescribed a particular use for one or more aeronautical purposes. The Commission shall utilize any such grant of property in accordance with the terms of the grant, and as to any such payment, or gift of funds or moneys, the Commission shall (1) deposit the same in any one or more state or national banks approved by the State Depository Board as a depository of the public funds of Texas, and shall (2) utilize such moneys for the purpose or purposes prescribed by the donor. A record shall be maintained in the Commission's offices of such properties and funds. Such funds shall be expended only upon general or special order of the Commission, and all checks shall be signed by the Director. Reports of any such expenditures shall be made at the end of each fiscal year to the Comptroller of Public Accounts of the State of Texas.

[See Compact Edition, Volume 3 for text of 7
to 10]

[Amended by Acts 1977, 65th Leg., p. 54, ch. 30, § 1, eff. March 29, 1977; Acts 1977, 65th Leg., p. 308, ch. 142, § 1, eff. May, 13, 1977; Acts 1977, 65th Leg., p. 380, ch. 189, § 1, eff. May 20, 1977.]

Validation of certain actions. Acts 1977, 65th Leg., p. 863, ch. 325, § 1, provides:

"All orders previously made, prior to January 1, 1977, by the Texas Aeronautics Commission granting certificates of public convenience and necessity for the operation of intrastate air carriers are hereby in all respects validated, ratified, and confirmed."

Art. 46c-7. Director of Aeronautics

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

Subd. 2. Powers and Duties. The Director shall be the executive officer of the Commission and under its supervision shall administer the provisions of this Act (and the rules, regulations, and orders established thereunder), and all other laws of the state relative to aeronautics. He shall attend all meetings of the Commission, but shall not have the power to vote. At the direction of the Commission he shall execute all contracts entered into by the Commission which are legally authorized and for which funds are provided by this Act, as amended, or in any appropriation Act.

[Amended by Acts 1977, 65th Leg., p. 308, ch. 142, § 2, eff. May 13, 1977.]

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

47a. Application of Sunset Act [NEW].
55f. Grading of Livestock [NEW].

Art. 47a. Application of Sunset Act

The office of Commissioner of Agriculture is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished effective September 1, 1987.

[Added by Acts 1977, 65th Leg., p. 1849, ch. 735, § 2.126, eff. Aug. 29, 1977.]

¹ Article 5429k.

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.

[See Compact Edition, Volume 3 for text of 15 to 17B]

[Amended by Acts 1975, 64th Leg., p. 851, ch. 325, §§ 1 and 2, eff. May 30, 1975.]

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."

The proposed constitutional amendments were 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 live-

stock 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.

(e) The State Seed and Plant Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1987.

¹ Article 5429k.

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 com-

missioner 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; Acts 1977, 65th Leg., p. 1850, ch. 737, § 2.123, eff. Aug. 29, 1977.]

CHAPTER THREE. PINK BOLLWORM

Article

75. Repealed.

76a. Application of Sunset Act [NEW].

Art. 75. Repealed by Acts 1975, 64th Leg., p. 567, ch. 225, § 1, eff. May 20, 1975

Art. 76a. Application of Sunset Act

The Pink Bollworm Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1979.

[Added by Acts 1977, 65th Leg., p. 1832, ch. 735, § 2.002, eff. Aug. 29, 1977.]

¹ Article 5429k.

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, vege-

table, 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 addi-

tional 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]

License Fee; Surety Bond

Sec. 4. (a) All applications for license under this Act shall be accompanied by a tender of payment in full of the fee for such license required; on receipt of said application duly executed, together with required fee, it shall be the duty of the Commissioner or his agents and/or employees thereunto duly authorized to immediately issue such license, provided that no license shall issue to any person when the application for license filed by such person shall indicate that such person is a suspended licensee within the State of Texas, or that such person's license to do business in Texas has been revoked until the Commissioner is furnished with satisfactory proof that the applicant is, on the date of the filing of such application, qualified to receive the license applied for; the issuance of license to persons who have suffered prior suspension or revocation of license in this State shall be discretionary with the Commissioner; in the exercise of such discretion, the Commissioner is authorized to take into considera-

tion the facts and circumstances pertaining to the prior suspension and/or revocation; the financial condition of the applicant, as of the date of this application, and the obligations due and owing by the applicant to growers and producers of citrus fruits and/or perishable agricultural commodities; "obligation," as the term is used in this Section, shall be construed to mean any judgment of any court within this State outstanding against the applicant or certified claims as of the date of the application under consideration by the Commissioner; prior to refusal of license by the Commissioner, any applicant for license shall be entitled to an open hearing on the facts pertaining to such application, said hearing to be conducted by the Commissioner, or his agent thereunto duly authorized; if, after such hearing, the Commissioner, in the exercise of his discretion, refuses the license applied for, the applicant shall, within ten (10) days from and after the denial of such license by the Commissioner and not thereafter, file his appeal from the order of the Commissioner denying such license, in any court of competent jurisdiction within this State; if the Commissioner shall determine that the license applied for shall not be granted, the Commissioner shall deduct from the license fee tendered with such application the sum of Five Dollars (\$5), said Five Dollars (\$5) to be retained by the Commissioner to defray costs and expenses incident to the filing and examination of said application and shall return the balance of the license fee so tendered with such application to the applicant.

(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," all retailers whose annual sales of vegetables and citrus fruit comprise seventy-five percent (75%) or more of the retailer's total sales and whose annual purchases of vegetables and citrus fruit exceed Fifteen Thousand Dollars (\$15,000) a year, and all retailers who employ buying agents who buy directly from producers, except per-

sons 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 fee of Two Hundred Dollars (\$200). All retailers whose annual sales of vegetables and citrus fruit comprise seventy-five percent (75%) or more of the retailer's total sales and whose annual purchases of vegetables and citrus fruit are less than Fifteen Thousand Dollars (\$15,000) shall pay a fee of Fifty Dollars (\$50) in addition to the fee required in Subsection (b) of this Section. The fee shall be paid annually at the time application is made for licensing, and the Commissioner may not issue a license to a person who fails to pay the fee. No cooperative association organized pursuant to Chapter 8, Title 93 of the Revised Civil Statutes of Texas, 1925, as amended, that handles fruit only for its members shall be required to pay the fee required in this Subsection. Any such cooperative association dealing in citrus fruit other than for its producer members shall be required to pay the fee as any other dealer. It is hereby declared to be the policy of the Legislature to make these exemptions with reference to cooperative associations because of the fact that the producer members pool their fruit for sale rather than immediately selling it.

(d) A person with whom the "commission merchant" and/or "dealer" or "contract dealer" deals in purchasing, handling, selling, and accounting for sales of citrus fruit and who is aggrieved by an action of that merchant in violation of the terms or conditions of a contract made by that merchant or dealer may initiate a claim against the Produce Recovery Fund in accordance with the provisions of this Section. The aggrieved party must file with the Commissioner a sworn complaint against the merchant or dealer and a Fifteen Dollar (\$15) filing fee. The filing fee shall be refunded if the complainant is awarded recovery from the fund. The Commissioner shall conduct an investigation of the complaint and shall determine the amount due the aggrieved party. If the amount determined by the Commissioner is not disputed by the merchant or dealer or by the aggrieved party, the Commissioner shall pay the claim, within the limits prescribed in this Section, from the Produce Recovery Fund. If the amount is disputed, the Produce Recovery Fund Board shall conduct a hearing on the claim in the manner provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). After a hearing on the disputed amount, the board shall determine the amount due the aggrieved party, and the Commissioner shall pay the aggrieved party that amount, within the limits prescribed in this Section, from the Produce Recovery Fund. A party not satisfied with the decision of the board may appeal that decision in the manner provided under

the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(e) In making payments from the Produce Recovery Fund, the Commissioner may not pay the aggrieved party more than sixty percent (60%) of any claim for more than One Hundred Dollars (\$100). The total payment of all claims arising from the same transaction may not exceed Ten Thousand Dollars (\$10,000). The total payment of claims against a single merchant or dealer may not exceed Twenty-five Thousand Dollars (\$25,000) in any one year.

(f) If the Commissioner pays a claim against a merchant or dealer, the Commissioner is subrogated to all rights of the aggrieved party against that merchant or dealer to the extent of the amount paid to the aggrieved party.

(g) If the Commissioner pays a claim against a merchant or dealer, the merchant or dealer must either reimburse the fund immediately or agree in writing to reimburse the fund on a schedule to be determined by rule of the Commissioner. In addition, the merchant must either pay the aggrieved party immediately the amount due him or agree in writing to pay the aggrieved party on a schedule to be determined by rule of the Commissioner. The payments made to the fund and the aggrieved party shall include interest at the rate of eight percent (8%) a year. If the merchant or dealer does not reimburse the fund or pay the aggrieved party, or does not agree in writing to do so, or defaults on a scheduled payment, the Commissioner shall cancel his license and may not issue a new license to that merchant or dealer for four years from the date of cancellation. If the merchant or dealer is a corporation, no officer or director of the corporation, and no person owning more than twenty-five percent (25%) of the stock in that corporation, may be licensed as a "commission merchant" and/or "dealer" or "contract dealer" during the four-year period in which the corporation is ineligible for licensing. An individual or corporation who is ineligible for licensing as a "commission merchant" and/or "dealer" or "contract dealer" under this Act is ineligible for licensing as a commission merchant under Chapter 218, Acts of the 58th Legislature, 1963, as amended (Article 1287-3, Vernon's Texas Civil Statutes), during the period of ineligibility.

(h) The Commissioner may not pay any claim against a "commission merchant" and/or "dealer" or "contract dealer" who was not licensed under this Act at the time of the transaction on which the claim is based and he may not pay any claim against a cash dealer.

[See Compact Edition, Volume 3 for text of 5]

Sec. 6. Any license issued under the provisions of this Act shall remain in full force and effect for a

period of twelve (12) months from and after the date of issuance thereof unless said permit shall be cancelled in the manner hereinafter provided and pursuant to the proceedings hereinafter required, to wit: any person aggrieved, injured or damaged by virtue of any violation of the terms and provisions of this Act by any licensee or by the transporting or buying agent of any licensee hereunder, may file with the Commissioner or his duly authorized agent or employee a verified complaint, setting out the specific violation complained of; the complaint must be filed within twelve (12) months from the date of the act that injured the complaining party; the Commissioner, on receipt of said verified complaint, shall set a date not more than ten (10) days from the receipt of such complaint for the hearing thereof; Commissioner shall, by registered mail to the last known address, notify the person complained of and shall furnish such person with a copy of such complaint; the Commissioner may, at his discretion, recess the hearing provided for in this Section from day to day if in his discretion the ends of justice demand such continuance; for the purpose of said hearings the Commissioner shall have the authority to summon witnesses; to inquire into matters of fact; to administer oaths, and to issue the subpoena duces tecum, for the purpose of obtaining any books, records, instruments of writing, and other papers pertinent to the investigation at hand; upon the conclusion of said hearing and the introduction of all evidence by the respective parties thereto, the Commissioner shall, within a reasonable length of time after studying all evidence, make his decision on the basis of the evidence introduced therein, and shall, if the evidence warrants, issue his order canceling the license of the person complained of; any licensee, whose license is so cancelled by an order of the Commissioner, shall be notified in writing by registered mail of the cancellation of said license and it shall be unlawful and a violation of this Act for any licensee or buying or transporting agent to operate from and after said notification of cancellation, provided that said licensee or buying or transporting agent whose license has been so cancelled shall have the right of appeal from the order of the Commissioner canceling said license to any court of competent jurisdiction within this State, provided that such appeal shall be filed in said court within ten (10) days from and after receipt by licensee of notice of said cancellation, and provided further that the effect of said appeal by said licensee or licensee's agent shall not act to supersede the order of cancellation issued by the Commissioner, pursuant to final determination of the question of cancellation by said court.

[See Compact Edition, Volume 3 for text of 7 and 8]

Sec. 8a. The Commissioner may publish as often as he considers necessary a list in pamphlet form of all persons licensed under this Act.

[See Compact Edition, Volume 3 for text of 9 to 11]

Sec. 12. Any license issued hereunder will authorize the licensee, and none other, to engage in the business as a dealer for one year from date of issuance; at which time said license shall expire and become null and void. Any license issued to applicant under the provisions of this Act, which expires by its own terms, may be renewed upon completion of a renewal application and payment to the Commissioner of Agriculture of the proper license fee as provided for the original issuance thereof. Said license and the identification cards hereinafter provided shall not be assignable and any attempt to assign same shall void such license or identification card. Upon application to the Commissioner by any licensed dealer, a reasonable number of "buying agent" and "transporting agent" identification cards may be issued and accredited to such dealer, under such rules and regulations as said Commissioner may prescribe, and said Commissioner is hereby empowered to charge a fee not to exceed One Dollar (\$1) for each card so issued:

(a) Such cards shall bear the name of the licensee, dealer, and the number of his license, also the name of the dealer's agent, and shall state thereon that said licensed dealer, as the principal, has authorized the agent named on the card, the holder thereof, to act for and on behalf of said principal, either as "buying agent" or as "transporting agent" as above defined. "Buying agent" identification cards shall be of a different color from "transporting agent" cards. Such identification cards shall be at all times carried upon the persons of such agents who shall, upon demand, display such cards to the Commissioner or his agents or representatives, or to any person with whom said agent may be transacting business under this Act.

(b) If and when the holder of any identification card ceases to be the agent of the dealer by whom he was employed, it shall be the duty of said agent to return immediately such agent's card to the Commissioner for cancellation and failure to do so shall constitute a violation of this Act.

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 Commis-

sioner 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.

Sec. 14. (a) For the purpose of enforcing the provisions of this Act, the Commissioner is hereby vested with full power and authority and it shall be his duty, either upon his own initiative or upon the receipt of a properly verified complaint, to investigate all alleged violations of this Act and for the purpose of making such investigation, he shall have, at all times, free and unimpeded access to all books, records, buildings, yards, warehouses, storage, and transportation and other facilities or places in which any citrus fruit is kept, stored, handled, processed or transported, and in furtherance of such investigation either the Commissioner in person or through his authorized representatives, may examine any portion of the ledger, books, accounts, memorandum, documents, scales, measures, and other matters, objects or persons pertinent to such alleged violation under investigation. The Commissioner shall take such action and hold such public hearings as in his judgment are shown to be necessary after such investigations, and shall take the proper action with reference to the cancellation or suspension of the license of any dealer hereunder shown to have been guilty of a violation of the terms of this Act. Such hearings shall be held in the nearest city or town in the county where violations are alleged to have occurred. Any order made by the Commissioner with reference to the revocation or cancellation of any license granted under the provisions of this Act, shall be subject to review by a Court of competent jurisdiction.

(b) If a person who has received at least 15 days' notice of an order of the Commissioner refuses to comply with that order, the Commissioner may seek temporary or permanent relief to require compliance. The district court has jurisdiction to grant this relief.

[See Compact Edition, Volume 3 for text of 15 to 20]

Sec. 21. From and after the effective date of this Act any person who shall:

(a) Act as a dealer and/or handler, as the terms "dealer" and/or "handler" are in this Act defined, without first obtaining a license to act as such dealer and/or handler, shall be fined not to exceed Five Hundred Dollars (\$500), and each day upon which any dealer or handler shall act or assume to act in violation of the requirements of this Act shall constitute a separate offense.

(b) Act or assume to act as a transporting agent or buying agent as the terms are herein defined,

without first obtaining from the Commissioner of Agriculture of the State of Texas a license or a buying agent's or a transporting agent's card as by the terms and provisions of this Act required, shall be fined not to exceed Five Hundred Dollars (\$500), and each day upon which any buying agent or transporting agent shall act or assume to act in violation of the requirements of this Act shall constitute a separate offense.

(c) Any buying or transporting agent who ceases to be employed by a dealer or handler or the agent of any dealer or handler to whom such buying agent's or transporting agent's card was issued and who fails and refuses on the termination of such employment to turn over to the Commissioner of Agriculture the buying or transporting agent's card issued to such person shall be fined not to exceed Five Hundred Dollars (\$500).

(d) Any person who shall act or assume to act as a commission merchant and/or dealer or a contract dealer, as the terms "commission merchant" and/or "dealer" or "contract dealer" are used in this Act without first paying to the Commissioner of Agriculture of the State of Texas the fee required in Subsection (c) of Section 4 of this Act and obtaining a license to act as such commission merchant and/or dealer or contract dealer shall be fined not to exceed Five Hundred Dollars (\$500), and each day upon which such person shall act or assume to act as such commission merchant and/or dealer or contract dealer shall constitute a separate offense.

(e) Any licensee or any transporting or buying agent of any licensee under this Act who shall violate any of the terms and provisions of this Act shall be fined not to exceed Five Hundred Dollars (\$500).

(f) Fifty percent (50%) of all fines collected under this Section shall be deposited in the Produce Recovery Fund. The clerk of the county court or county court-at-law and the custodian of county treasury funds shall keep separate records of all fines collected under this Section. On the first day of each January, April, July, and October, the custodian of the funds in the county treasury shall remit this portion of the fines collected to the comptroller of public accounts, and the comptroller shall deposit that amount in the Produce Recovery Fund.

Sec. 22. The provisions of this Act shall not apply to a retailer of citrus fruit, except a retailer whose annual sales of citrus fruit and vegetables comprise seventy-five percent (75%) or more of his total sales or who employs a buying agent who buys directly from producers, nor to any person shipping less than six (6) standard boxes of citrus fruit in any one separate shipment nor shall this Act apply to noncommercial shipments.

Sec. 23. Any citrus grower who handles and markets only citrus fruit grown by him, shall file an application for a license as a dealer in citrus fruit and upon so filing said application with the Commissioner of Agriculture of the State of Texas in the form prescribed, he shall be entitled to a license as a minimum dealer of citrus fruit; i. e., one handling not in excess of one thousand (1000) standard boxes, or the equivalent thereof, per twelve-month period and said license shall be issued to him without the payment of any fee and he shall thereupon be entitled to handle, market, sell, and dispose of his citrus fruit in accordance therewith subject to the pertinent provisions of this Act.

[See Compact Edition, Volume 3 for text of 24]

Sec. 25. Any person who purchases citrus fruit only from dealers duly qualified as such under this Act and receives said fruit at the dealer's place of business and pays therefor prior to or at the time of delivery or taking possession of such citrus fruit so purchased in current money of the United States shall be exempt from paying the fee provided for in Subsection (c) of Section 4 of this Act and such person shall indicate on his application for license that he desires to operate as a cash buyer, buying only from dealers duly qualified as such under this Act, in accordance with the provisions of this Section and thereupon such person shall be entitled to a license as a cash citrus dealer, purchasing only from dealers duly qualified under this Act, upon the payment by such applicant of the license fee as required under this Act. Such dealer shall be subject to all the pertinent provisions of this Act. Any violation of this Section shall be deemed a misdemeanor and be punishable, as provided in Section 21 of this Act.

[See Compact Edition, Volume 3 for text of 26 to 28]

[Amended by Acts 1975, 64th Leg., p. 993, ch. 382, §§ 1 and 2, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1048, ch. 386, §§ 11 to 19, eff. Sept. 1, 1977.]

Sections 20 to 22 of the 1977 amendatory act provide:

"Sec. 20. A bond of a commission merchant, dealer, or contract dealer required under Chapter 218, Acts of the 58th Legislature, 1963, as amended (Article 1287-3, Vernon's Texas Civil Statutes), or under Chapter 236, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 118b, Vernon's Texas Civil Statutes), and issued prior to the effective date of this Act continues in effect until the expiration of the liability provided for in the bonding contract. After the expiration of the license under which the commission merchant, dealer, or contract dealer is operating on the effective date of this Act, that merchant or dealer must pay the required fee to the Produce Recovery Fund in order to be licensed."

"Sec. 21. Notwithstanding any other provision of law, for the first fiscal year that this Act is in effect all license fees collected under the provisions of Chapter 218, Acts of the 58th Legislature, 1963, as amended (Article 1287-3, Vernon's Texas Civil Statutes), or of Chapter 236, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 118b, Vernon's Texas Civil Statutes), shall be deposited in the Produce Recovery Fund. Thereafter, license fees shall be deposited as provided for in those acts."

"Sec. 22. This Act takes effect September 1, 1977."

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 provi-

sion 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 trademark 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 situated 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 reg-

ulations 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.

(c) The Pesticide Advisory Committee is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the committee is abolished effective September 1, 1979.

¹ Article 5429k.

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.

17 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 conduct 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 li-

censed. 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 en-

ter into cooperative agreements with a federal agency, 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; Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.008, eff. Aug. 29, 1977.]

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.

Board; Members; Chairman; Bylaws; Expenses; Executive Director; Application of Sunset Act

Sec. 3.

[See Compact Edition, Volume 3 for text of 3(a) to (3)d]

(e) The Texas Structural Pest Control Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the

board is abolished, and this Act expires effective September 1, 1979.

¹ Article 5429k.

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; Work on Own or Employer's Premises

Sec. 5. (a) Except as provided in Subsections (b) and (c), 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.

(c) A person without a license may, on his own premises or on the premises of an employer by whom he was hired primarily to perform other services, use insecticides, pesticides, rodenticides, fumigants, or allied chemicals or substances or mechanical devices designed to prevent, control, or eliminate pest infestations unless that use is prohibited by rule of the United States Environmental Protection Agency or unless the substance used is labeled as a restricted-use pesticide or a state-limited-use pesticide.

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 Certified 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; Acts 1977, 65th Leg., p. 1452, ch. 590, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1835, ch. 735, § 2.022, eff. Aug. 29, 1977.]

Acts 1977, 65th Leg., ch. 590, amending § 5 of this article, provides in § 2 as follows:

"This Act takes effect on the date of publication of the United States Environmental Protection Agency's first list of restricted-use or prohibited-use pesticides."

CHAPTER SEVEN B. NOXIOUS WEEDS

Art. 135c. Districts for Control and Eradication of Noxious Weeds in Certain Counties

[See Compact Edition, Volume 3 for text of 1 to 10]

Ballots

Sec. 11. The ballots for such election shall have printed thereon the following propositions: "For creation of the district and uniform assessment of benefits not to exceed Six Cents (6¢) per acre" and "Against creation of the district."

[See Compact Edition, Volume 3 for text of 12 and 13]

Maximum Uniform Assessment Rate; Election; District Embracing More than One County

Sec. 13a. (a) The Commissioners Court of jurisdiction in an existing Noxious Weed Control District may order an election for the purpose of submitting to the qualified property taxpaying voters residing in the district whether or not the maximum uniform assessment rate shall be increased to Six Cents (6¢) per acre. Notice of the election shall be given in accordance with Section 10 of this Act, and the election shall be conducted in accordance with the procedures set forth in Section 12 of this Act.

(b) The ballots for the election shall be printed to read as follows: "For increasing the maximum uniform assessment rate to Six Cents (6¢)" and "Against increasing the maximum uniform assessment rate."

(c) Immediately after the election, the election officers shall make returns of the result to the Commissioners Court of jurisdiction, which shall canvass the vote and declare the results of the election. If the district embraces more than one county, the Commissioners shall declare the maximum uniform assessment rate increased to Six Cents (6¢) only in the territory included in each county in which the majority of the votes cast were in favor of the increase.

[See Compact Edition, Volume 3 for text of 14 to 18]

Levy of Uniform Assessments; Assessor-Collector; Bond; Report of Chairman of Board.

Sec. 19. The Board of Directors may levy an annual uniform assessment against the land within the district, not to exceed Six Cents (6¢) per acre, for the purpose of paying the expenses of the district. The Board may appoint an assessor-collector to assess and collect the assessments and may allow him as compensation an amount not to exceed five per cent (5%) of all money collected by him. He may be required to give bond in an amount to be fixed by the Board. If the Board of Directors prefers, it may contract with the county tax assessor-collector to perform these services, and the county tax assessor-collector shall be entitled to retain five per cent (5%) of all money collected by him, which shall be accounted for as other fees of office; or the Board may appoint an assessor and contract with the county assessor-collector for collection of the tax, in which event the district assessor's compensation shall be fixed at an amount not to exceed two and one-half per cent (2½%) of the total assessments and the county assessor-collector may retain two and one-half per cent (2½%) of the amounts which he collects. The moneys collected shall be deposited in the district depository selected by the Board.

The chairman of the Board of Directors shall file an annual report with the county clerk of each county in which the district lies, before September 1 of each year, showing the total amount received and an itemized statement of the amounts expended during the preceding twelve (12) months ending June 30, together with the balance remaining on hand.

Annual Report as to Money Received Through Assessment; Disbursement

Text of § 19a added by Acts 1977, 65th Leg., p. 1375, ch. 547, § 4.

Sec. 19a. (a) Before September 1 of each year, the chairman of the Board of Directors shall file a report with the Commissioner of Agriculture, specifying the total amount of money received through the assessment during the preceding 12-month period ending June 30. The Commissioner of Agriculture shall certify that amount to the Comptroller of Public Accounts.

(b) The Comptroller shall issue a warrant payable to each district in the amount certified by the Commissioner of Agriculture from funds appropriated by the Legislature for the control of noxious weeds. In the event that the funds appropriated are less than the total of all amounts certified by the Commissioner of Agriculture, each district is entitled to receive a share of the funds appropriated in proportion to the amount certified for that district.

Annual review to exclude land in Crosby County

Text of 19A added by Acts 1977, 65th Leg., p. 2017, ch. 805 § 1

Sec. 19A. (a) The Commissioners Court of Crosby County shall establish a regular time once every calendar year to review petitions for excluding land from the district.

(b) The Commissioners Court of Crosby County shall publish notice of the hearing once a week for two consecutive weeks in one or more newspapers with general circulation in the district. The first publication shall appear at least 15 days and not more than 40 days before the date of the hearing.

(c) The notice shall advise all interested landowners of their right to present petitions for exclusions and offer evidence in support of the petition and their right to contest any proposed exclusions based on either a petition or the court's own conclusions.

(d) A landowner within the district may file a petition with the Commissioners Court requesting that land be excluded from the district. A petition for exclusion shall be filed with the court at least 10 days before the hearing and shall state clearly the reasons why the land will not benefit from inclusion in the district.

(e) After considering all evidence presented to it, if the Commissioners Court of Crosby County finds that the land described in a petition for exclusion does not benefit from inclusion in the district, the court shall declare the land excluded and shall redefine the boundaries of the district accordingly.

(f) The owner of the excluded land is not exempt from liability for any amounts due to the district prior to exclusion of the land.

(g) Land excluded from the district under this section may be included in the district at a later time after petition, notice, and hearing as provided in this section for exclusion of land from the district.

[See Compact Edition, Volume 3 for text of 20 to 22]

[Amended by Acts 1977, 65th Leg., p. 1375, ch. 547, §§ 1 to 4, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2017, ch. 805, § 1, eff. June 16, 1977.]

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, Callahan, 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 H]

I. The State Soil Conservation Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1985.

¹ Article 5429k.

[See Compact Edition, Volume 3 for text of 5 to 13]

[Amended by Acts 1975, 64th Leg., p. 156, ch. 66, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1845, ch. 735, § 2.097, eff. Aug. 29, 1977.]

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 president 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.

Application of Sunset Act

Sec. 2b. The Natural Fibers and Food Protein Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1987.

¹ Article 5429k.

[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; Acts 1977, 65th Leg., p. 1850, ch. 735, § 2.127, eff. Aug. 29, 1977.]

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.]

CHAPTER FOURTEEN. POULTRY

Article

165-7a. Application of Sunset Act [NEW].

Art. 165-7a. Application of Sunset Act

The Poultry Improvement Board is subject to the Texas Sunset Act;¹ and unless continued in exist-

ence as provided by that Act the board is abolished, and this Act expires effective September 1, 1987. [Added by Acts 1977, 65th Leg., p. 1849, ch. 735, § 2.123, eff. Aug. 29, 1977.]

¹ Article 5429k.

CHAPTER SIXTEEN. FORESTS

Art. 165-9. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(4), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

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 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 Henderson 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, 128, 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, Lampasas, 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]

1A.—Jasper, Newton and Tyler. See Article 199a, Sec. 3.075

[See Compact Edition, Volume 3 for text of 2 to 14]

15, 59—Grayson and Collin

Grayson County shall constitute the Fifteenth Judicial District and the Fifty-ninth Judicial District. The District Courts shall be held therein as follows:

FIFTEENTH DISTRICT: On the first Monday in January and continuing until and including the last Saturday before the first Monday in April; on the first Monday in April and continuing until and including the last Saturday before the first Monday in July; on the first Monday in July and continuing

until and including the last Saturday before the first Monday in October; on the first Monday in October and continuing until and including the last Saturday before the first Monday in January.

FIFTY-NINTH DISTRICT: On the second Monday in March and continuing until and including the last Saturday before the third Monday in June; on the third Monday in June and continuing until and including the last Saturday before the first Monday in December; and on the first Monday in December and continuing until and including the last Saturday before the second Monday in March.

The District Courts of the Fifteenth and Fifty-ninth Judicial Districts, in the County of Grayson, shall have concurrent jurisdiction with each other throughout the limits of Grayson County of all matters civil and criminal of which jurisdiction is given to the District Courts by the Constitution and laws of this State, provided, that the Judge of the Fifty-ninth Judicial District may impanel the Grand Jury in Grayson County when, in the discretion of said Court, it is deemed by him proper so to do. He may draw and impanel such grand jury for any terms of his Court as provided by law for other District Courts for impaneling grand juries. Either of the Judges of District Court of Grayson County, may in his discretion, transfer any case or cases, civil or criminal, that may at any time be pending in his Court, to the other District Court in Grayson County, by order or orders entered upon the minutes of the Court making such transfer; and where such transfer or transfers are made, the Clerk of said Court shall enter such case or cases upon the dockets of the Court to which such transfer or transfers are made, and when so entered upon the docket, the Judge of said Court shall try and dispose of said cases in the same manner as if such cases were originally in said Court. The Clerk of the District Court of Grayson County, as heretofore constituted, and his successor in office shall be the Clerk of both the Fifteenth and Fifty-ninth District Courts in said Grayson County, and shall perform all the duties pertaining to the clerkship of both of said Courts.

[See Compact Edition, Volume 3 for text of 16 to 26]

[Amended by Acts 1977, 65th Leg., p. 9, ch. 5, § 2, eff. April 1, 1977.]

27.—Bell and Lampasas

(a) The 27th Judicial District shall be composed of the Counties of Bell and Lampasas, 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.

[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; Acts 1977, 65th Leg., p. 321, ch. 154, § 2, eff. Aug. 29, 1977.]

[See Compact Edition, Volume 3 for text of 28 to 34]

35.—Mills, Brown and Coleman

The 35th Judicial District is composed of the Counties of Mills, Brown and Coleman. The terms of said District Court shall be held in said counties each year as follows:

In the County of Mills on the first Mondays in January, May and October.

In the County of Brown on the first Mondays in February, June and November.

In the County of Coleman on the first Mondays in April and September.

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

[Amended by Acts 1977, 65th Leg., p. 321, ch. 154, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 Act amended subd. 27 of this article; § 3 thereof provided:

"All cases and proceedings pending on the effective date of this Act in McCulloch County in the 35th District Court shall be transferred to the 198th District Court. All process and writs issued from the 35th District Court are returnable to the 198th District Court. The obligees in all bonds and recognizances taken in and for the 35th District Court and all witnesses summoned to appear before the 35th District Court are required to appear before the 198th District Court but not at a time earlier than originally required. Each writ and process is as legal and valid as if it had been made returnable to the 198th District Court."

[See Compact Edition, Volume 3 for text of 36 to 42]

43.—Parker

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

(b) The District Court for the 43rd Judicial District shall have and exercise all jurisdiction now or hereafter prescribed by the constitution and general laws of this State for district courts. All civil cases and all criminal cases originally filed and now pend-

ing on the docket of the 43rd District Court, over which original jurisdiction is assigned to county courts in this state by the constitution and general laws of this State are hereby transferred to the County Court of Parker County.

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

(d) The District Clerk of Parker County shall perform all duties and functions prescribed by the constitution and general laws of this state for district clerks, and such other functions as may be prescribed by the judge of the 43rd District Court, for the efficient administration of the affairs of the district court. The district clerk shall, within 30 days after the effective date of this amendment transfer and deliver to the County Clerk of Parker County all papers in the cases transferred herein. The appellate mandates of any cases on appeal and transferred herein shall be returned to the County Court of Parker County. The judge of the 43rd District Court shall appoint an official shorthand reporter for the court. The reporter shall be a sworn official of the court, and all provisions of law relating to the appointment, qualifications, and duties of official shorthand reporters in this State shall govern. In addition to transcript fees, fees for statements of facts, and other expenses necessary to the office authorized by law, the official shorthand reporter for the 43rd District Court shall be paid a salary set by order of the judge of the court as provided by the general law in Chapter 622, Acts of the 62nd Legislature, Regular Session, 1971 (Article 3912k, Vernon's Texas Civil Statutes). Court bailiffs, court clerks, and secretaries, probation officers and probation department employees shall be appointed by the judge of the 43rd District Court, as in his discretion are necessary for the efficient administration of the affairs of the district court, and paid salaries to be set as authorized by the general law of this State.

[See Compact Edition, Volume 3 for text of (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; Acts 1977, 65th Leg., p. 677, ch. 257, § 2, eff. May 25, 1977.]

[See Compact Edition, Volume 3 for text of 44 to 51]

52.—Coryell

The 52nd Judicial District of Texas shall be composed of Coryell County, and the terms of the District Court shall be held therein each year on the first Mondays in January and June.

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

[Amended by Acts 1977, 65th Leg., p. 9, ch. 5, § 3, eff. April 1, 1977.]

[See Compact Edition, Volume 3 for Text of 53 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.

[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 68]

69.—Moore, Hartley, Sherman and Dallam

The 69th Judicial District shall be composed of the Counties of Moore, Hartley, Sherman, and Dallam and the terms of the District Court as hereby designated and shall be held therein each year as follows:

In the County of Moore on the Tenth Monday after the Second Monday in January and July;

In the County of Hartley on the Twelfth Monday after the Second Monday in January and July;

In the County of Sherman, on the Fourteenth Monday after the Second Monday in January and July;

In the County of Dallam on the Sixteenth Monday after the Second Monday in January and July.

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.

[Amended by Acts 1977, 65th Leg., p. 10, ch. 5, § 4, eff. April 1, 1977.]

[See Compact Edition, Volume 3 for Text of 70 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 89]

90.—Stephens and Young

The Counties of Stephens and Young shall hereafter constitute and be the 90th Judicial District of the State of Texas and the terms of the District Courts shall be held therein each as follows:

In the County of Stephens, on the first Monday in January, April, July and October of each year and may continue in session until the date herein fixed for the convening of the next regular term of such Court in Stephens County.

In the County of Young, on the first Monday in March, June, September and December of each year and may continue in session until the date herein fixed for convening the next regular term of such Court in Young County.

[Amended by Acts 1977, 65th Leg., p. 2158, ch. 860, § 7, eff. Sept. 1, 1977.]

[See Compact Edition, Volume 3 for text of 90 to 103]

104.—Taylor

Sec. 1. The 104th Judicial District of Texas is composed of Taylor County.

Sec. 2. The 104th District Court shall convene on the eleventh Monday after the first Monday in January of each year, and on the twenty-fourth Monday after the first Monday in January of each year and on the ninth Monday after the first Monday in September of each year, and each of said terms of Court in said County shall continue until the convening of the next succeeding term of Court in said County.

[See Compact Edition, Volume 3 for text of 3 to 5]

[Amended by Acts 1977, 65th Leg., p. 2158, ch. 860, § 8, eff. Sept. 1, 1977.]

[See Compact Edition, Volume 3 for text of 105 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 129]

130.—Brazoria, Fort Bend, Matagorda and Wharton

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

Sec. 1a. (a) Notwithstanding any other provision of this Act, from and after January 1, 1981, the 130th Judicial District shall be composed of the County of Matagorda.

(b) Beginning at the general election in 1980, the judge of the 130th Judicial District shall stand for election and be elected only from the County of Matagorda.

(c) From and after January 1, 1981, the provisions of this Act do not apply to the 130th District Court and the judge of the 130th District Court in the counties of Brazoria, Fort Bend and Wharton.

[See Compact Edition, Volume 3 for text of 2 to 9]

[Amended by Acts 1977, 65th Leg., p. 2158, ch. 860, § 6, eff. Sept. 1, 1977.]

[See Compact Edition, Volume 3 for text of 131 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 216]

217.—Angelina. See Article 199a, Sec. 3.044

218.—Atascosa, Frio, Karnes, LaSalle and Wilson. See Article 199a, Sec. 3.045

219.—Collin. See Article 199a, Sec. 3.046

220.—Hamilton, Comanche and Bosque. See Article 199a, Sec. 3.047

221.—Montgomery. See Article 199a, Sec. 3.048

222.—Deaf Smith and Oldham. See Article 199a, Sec. 3.049

223.—Gray. See Article 199a, Sec. 3.050

224.—Bexar. See Article 199a, Sec. 3.051

225.—Bexar. See Article 199a, Sec. 3.052

226.—Bexar. See Article 199a, Sec. 3.053

227.—Bexar. See Article 199a, Sec. 3.054

228.—Harris. See Article 199a, Sec. 3.055

[See Compact Edition, Volume 3 for text of 229]

230.—Harris. See Article 199a, Sec. 3.056

231.—Tarrant. See Article 199a, Sec. 3.057

232.—Harris. See Article 199a, Sec. 3.058

233.—Tarrant. See Article 199a, Sec. 3.059

234.—Harris. See Article 199a, Sec. 3.060

236.—Tarrant. See Article 199a, Sec. 3.061

237.—Lubbock. See Article 199a, Sec. 3.062

238.—Midland. See Article 199a, Sec. 3.063

239.—Brazoria. See Article 199a, Sec. 3.064

240.—Fort Bend. See Article 199a, Sec. 3.065

241.—Smith. See Article 199a, Sec. 3.066

242.—Hale, Swisher and Castro. See Article 199a, Sec. 3.067

243.—El Paso. See Article 199a, Sec. 3.068

244.—Ector. See Article 199a, Sec. 3.069

245.—Harris. See Article 199a, Sec. 3.070

246.—Harris. See Article 199a, Sec. 3.071

247.—Harris. See Article 199a, Sec. 3.072

248.—Harris. See Article 199a, Sec. 3.073

249.—Johnson and Somervell. See Article 199a, Sec. 3.074

- 250.—Travis. See Article 199a, Sec. 3.076
- 251.—Potter and Randall. See Article 199a, Sec. 3.077
- 252.—Jefferson. See Article 199a, Sec. 3.078
- 253.—Chambers and Liberty. See Article 199a, Sec. 3.079
- 254.—Dallas. See Article 199a, Sec. 3.080
- 255.—Dallas. See Article 199a, Sec. 3.081
- 256.—Dallas. See Article 199a, Sec. 3.082
- 257.—Harris. See Article 199a, Sec. 3.083
- 258.—Polk, San Jacinto and Trinity. See Article 199a, Sec. 3.084
- 259.—Jones and Shackelford. See Article 199a, Sec. 3.085
- 260.—Orange. See Article 199a, Sec. 3.086
- 261.—Travis. See Article 199a, Sec. 3.087
- 262.—Harris. See Article 199a, Sec. 3.088
- 263.—Harris. See Article 199a, Sec. 3.089
- 264.—Bell. See Article 199a, Sec. 3.090
- 265.—Dallas. See Article 199a, Sec. 3.091

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 3.031]

205.—El Paso, Hudspeth and Culberson

Sec. 3.032. (a) The 205th Judicial District, composed of the Counties of El Paso, Hudspeth, and Culberson is created.

(b) The 205th District Court shall give preference to criminal cases.

[See Compact Edition, Volume 3 for text of 3.033 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.

210.—El Paso, Hudspeth and Culberson

Sec. 3.038. The 210th Judicial District, composed of the Counties of El Paso, Hudspeth, and Culberson, is created.

[See Compact Edition, Volume 3 for text of 3.039 to 3.043]

217.—Angelina

Sec. 3.044. The 217th Judicial District, composed of the County of Angelina, is hereby created.

218.—Atascosa, Frio, Karnes, LaSalle and Wilson

Sec. 3.045. (a) The 218th Judicial District, composed of the Counties of Atascosa, Frio, Karnes, LaSalle, and Wilson, is hereby created.

(b) The judge of the 218th District Court may elect grand jury commissioners and impanel grand juries in each county in the district but is not required to impanel a grand jury in any county except when he deems it necessary. The judge may alternate the impaneling of grand juries with the judge of any other district court in each county, or the judges may by agreement determine which one of the courts will impanel the grand juries. Indictments within each county may be returned to either court within that county. All grand and petit juries drawn for one district court in each county are interchangeable with any other district court in that county the same as if the jury had been drawn for the court in which it is used.

219.—Collin

Sec. 3.046. The 219th Judicial District, composed of the County of Collin, is hereby created.

220.—Hamilton, Comanche and Bosque

Sec. 3.047. The 220th Judicial District, composed of the Counties of Hamilton, Comanche, and Bosque, is hereby created.

221.—Montgomery

Sec. 3.048. The 221st Judicial District, composed of the County of Montgomery, is hereby created.

222.—Deaf Smith and Oldham

Sec. 3.049. (a) The 222nd Judicial District, composed of the Counties of Deaf Smith and Oldham, is hereby created.

(b) The commissioners court of Deaf Smith County and Oldham County by agreement or separately may supplement the district judge's state compensation.

(c) The salary of the official shorthand reporter shall be set by the district judge of this judicial district at a sum of not less than \$15,000 per annum. In addition to a salary, the reporter shall receive allowances for his actual and necessary travel and hotel expenses, if any, while actually engaged in the discharge of his duties, not to exceed the amount allowed by the federal government while traveling by private conveyance and going to and returning from the place where such duties are discharged, traveling the nearest practical route. The 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. The 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.

(d) The adult probation officer shall receive a salary of not less than \$15,000 per annum. In addition to a salary, the adult probation officer shall receive allowances for his actual and necessary travel and hotel expenses while actually engaged in the discharge of his duties, such travel allowances not to exceed the amount allowed by the federal government while traveling by private conveyance in going to and returning from the place where such duties are discharged, traveling the nearest practical route. The expenses shall be paid by the respective counties of the judicial district for which they are incurred out of the general fund of the county upon the sworn statement of the adult probation officer, approved by the judge. In lieu of travel allowances the commissioners court of each county by agreement may provide transportation under the same terms and conditions as provided for sheriffs.

223.—Gray

Sec. 3.050. The 223rd Judicial District, composed of the County of Gray, is hereby created.

224.—Bexar

Sec. 3.051. (a) The 224th Judicial District, composed of the County of Bexar, is hereby created.

(b) The 224th District Court shall give preference to civil cases.

225.—Bexar

Sec. 3.052. (a) The 225th Judicial District, composed of the County of Bexar, is hereby created.

(b) The 225th District Court shall give preference to civil cases.

226.—Bexar

Sec. 3.053. (a) The 226th Judicial District, composed of the County of Bexar, is hereby created.

(b) The 226th District Court shall give preference to criminal cases.

(c) The 226th District Court shall hold six terms each year for the trial of causes and the disposition of business coming before it, one term beginning the first Monday in January, one the first Monday in March, one the first Monday in May, one the first Monday in July, one the first Monday in September, and one the first Monday in November of each year. Each term shall continue until the business is disposed of.

227.—Bexar

Sec. 3.054. (a) The 227th Judicial District, composed of the County of Bexar, is hereby created.

(b) The 227th District Court shall give preference to criminal cases.

(c) The 227th District Court shall hold six terms each year for the trial of causes and the disposition of business coming before it, one term beginning the first Monday in January, one the first Monday in March, one the first Monday in May, one the first Monday in July, one the first Monday in September, and one the first Monday in November of each year. Each term shall continue until the business is disposed of.

228.—Harris

Sec. 3.055. (a) The 228th Judicial District, composed of the County of Harris, is hereby created.

(b) The 228th District Court shall give preference to criminal cases.

(c) The 228th District 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.

230.—Harris

Sec. 3.056 (a) The 230th Judicial District, composed of the County of Harris, is hereby created.

(b) The 230th District Court shall give preference to criminal cases.

(c) The 230th District 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.

231.—Tarrant

Sec. 3.057. (a) The 231st Judicial District, composed of the County of Tarrant, is hereby created.

(b) The 231st District Court shall give preference to family law matters.

232.—Harris

Sec. 3.058. (a) The 232nd Judicial District, composed of the County of Harris, is hereby created.

(b) The 232nd District Court shall give preference to criminal cases.

(c) The 232nd District 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.

233.—Tarrant

Sec. 3.059. (a) The 233rd Judicial District, composed of the County of Tarrant, is hereby created.

(b) The 233rd District Court shall give preference to family law matters.

234.—Harris

Sec. 3.060. The 234th Judicial District, composed of the County of Harris, is hereby created.

236.—Tarrant

Sec. 3.061. The 236th Judicial District, composed of the County of Tarrant, is hereby created.

237.—Lubbock

Sec. 3.062. The 237th Judicial District, composed of the County of Lubbock, is hereby created.

238.—Midland

Sec. 3.063. The 238th Judicial District, composed of the County of Midland, is hereby created.

239.—Brazoria

Sec. 3.064. The 239th Judicial District, composed of the County of Brazoria, is hereby created.

240.—Fort Bend

Sec. 3.065. The 240th Judicial District, composed of the County of Fort Bend, is hereby created.

241.—Smith

Sec. 3.066. (a) The 241st Judicial District, composed of the County of Smith, is hereby created.

(b) The 241st District Court shall give preference to cases involving juvenile and family law matters.

242.—Hale, Swisher and Castro

Sec. 3.067. The 242nd Judicial District, composed of the Counties of Hale, Swisher, and Castro, is hereby created.

243.—El Paso

Sec. 3.068. The 243rd Judicial District, composed of the County of El Paso, is hereby created.

244.—Ector

Sec. 3.069. The 244th Judicial District, composed of the County of Ector, is hereby created.

245.—Harris

Sec. 3.070. (a) The 245th Judicial District, composed of the County of Harris, is hereby created.

(b) The 245th District Court shall give preference to family law matters.

246.—Harris

Sec. 3.071. (a) The 246th Judicial District, composed of the County of Harris, is hereby created.

(b) The 246th District Court shall give preference to family law matters.

247.—Harris

Sec. 3.072. (a) The 247th Judicial District, composed of the County of Harris, is hereby created.

(b) The 247th District Court shall give preference to family law matters.

248.—Harris

Sec. 3.073. (a) The 248th Judicial District, composed of the County of Harris, is hereby created.

(b) The 248th District Court shall give preference to criminal cases.

(c) The 248th District 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.

249.—Johnson and Somervell

Sec. 3.074. The 249th Judicial District, composed of the counties of Johnson and Somervell, is hereby created.

1A.—Jasper, Newton and Tyler

Sec. 3.075. (a) There is hereby created a judicial district, composed of the counties of Jasper, Newton, and Tyler, to be known as Judicial District 1A.

(b) The jurisdiction of the court created in this section is concurrent with the jurisdiction of the other district courts in the counties of Jasper, Newton, and Tyler, which courts shall retain and continue to exercise the jurisdiction that is now or may be hereafter conferred by law on district courts.

250.—Travis

Sec. 3.076. The 250th Judicial District, composed of the County of Travis, is hereby created.

251.—Potter and Randall

Sec. 3.077. (a) The 251st Judicial District, composed of the counties of Potter and Randall, is hereby created.

(b) The 251st District Court may hear and determine, in whichever county in that district is convenient for the court, all preliminary or interlocutory matters in which a jury may not be demanded in any case pending in any county in the district, regardless of whether the cases were filed in the county in which the hearing is held. The 251st District Court may, unless there is some objection filed by a party to the suit, hear, in any county in the district which is convenient for the court, any nonjury case, including but not limited to divorces, adoptions, default judgments, and matters where there has been citation by publication, pending in any county in the district, regardless of whether the cases were filed in the county in which the hearing is held.

252.—Jefferson

Sec. 3.078. (a) The 252nd Judicial District, composed of the County of Jefferson, is hereby created.

(b) The 252nd District Court shall give preference to criminal cases.

(c) The 252nd District Court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning the first Monday of April, one term beginning the first Monday of July, one term beginning the first Monday of October, one term beginning the first Monday of January. Each term shall continue until the term ends by operation of law or the business is disposed of.

253.—Chambers and Liberty

Sec. 3.079. The 253rd Judicial District, composed of the counties of Chambers and Liberty, is hereby created.

254.—Dallas

Sec. 3.080. (a) The 254th Judicial District, composed of the County of Dallas, is hereby created.

(b) The 254th District Court shall give preference to family law matters.

255.—Dallas

Sec. 3.081. (a) The 255th Judicial District, composed of the County of Dallas, is hereby created.

(b) The 255th District Court shall give preference to family law matters.

256.—Dallas

Text of sec. 3.082 added effective January 1, 1979, except as provided in subsec. (c)

Sec. 3.082. (a) The 256th Judicial District, composed of the County of Dallas, is hereby created.

(b) The 256th District Court shall give preference to family law matters.

(c) The 256th Judicial District exists on the date of the general election in 1978 for purposes of the election of the judge, and at the general election in 1978 there shall be elected by the qualified voters of the 256th Judicial District, a judge of the 256th District Court for a four-year term beginning on January 1, 1979.

257.—Harris

Sec. 3.083. (a) The 257th Judicial District, composed of the County of Harris, is hereby created.

(b) The 257th District Court shall give preference to family law matters.

258.—Polk, San Jacinto and Trinity

Sec. 3.084. The 258th Judicial District, composed of the counties of Polk, San Jacinto, and Trinity is hereby created.

259.—Jones and Shackelford

Sec. 3.085. (a) The 259th Judicial District, composed of the counties of Jones and Shackelford, is hereby created.

(b) In addition to the jurisdiction prescribed by the constitution and general laws of the state for district courts, the 259th District Court in both of the counties of Jones and Shackelford shall have all original and appellate civil and criminal jurisdiction normally exercised by county courts under the constitution and general laws of this state.

260.—Orange

Sec. 3.086. The 260th Judicial District, composed of the County of Orange, is hereby created.

261.—Travis

Sec. 3.087. The 261st Judicial District, composed of the County of Travis, is hereby created.

262.—Harris

Sec. 3.088. (a) The 262nd Judicial District, composed of the County of Harris, is hereby created.

(b) The 262nd District Court shall give preference to criminal cases.

(c) The 262nd District 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.

263.—Harris

Text of sec. 3.089 added effective September 1, 1978

Sec. 3.089. (a) The 263rd Judicial District, composed of the County of Harris, is hereby created.

(b) The 263rd District Court shall give preference to criminal cases.

(c) The 263rd District 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.

264.—Bell

Text of sec. 3.090 added effective January 1, 1979, except as provided in subsec. (b)

Sec. 3.090. (a) The 264th Judicial District, composed of the County of Bell, is hereby created.

(b) The 264th Judicial District exists on the date of the general election in 1978 for purposes of the election of the judge, and at the general election in 1978 there shall be elected by the qualified voters of the 264th Judicial District, a judge of the 264th District Court for a four-year term beginning on January 1, 1979.

265.—Dallas

Text of sec. 3.091 added effective January 1, 1979, except as provided in subsec. (c)

Sec. 3.091. (a) The 265th Judicial District, composed of the County of Dallas, is hereby created.

(b) The 265th District Court shall give preference to criminal cases.

(c) The 265th Judicial District exists on the date of the general election in 1978 for purposes of the election of the judge, and at the general election in 1978 there shall be elected by the qualified voters of the 265th Judicial District, a judge of the 265th District Court for a four-year term beginning on January 1, 1979.

SUBCHAPTER D. DISTRICT ATTORNEYS 220th Judicial District

Sec. 4.005. (a) The office of district attorney for the 220th Judicial District is created.

(b) The district attorney shall perform within the 220th Judicial District all the duties imposed and have all the authority conferred on district attorneys by the general laws of this state.

(c) The district attorney shall receive from the state as salary the amount appropriated by the legislature for district attorneys.

259th Judicial District

Sec. 4.006. (a) The office of the district attorney for the 259th Judicial District is created.

(b) The district attorney shall represent the state in all felony cases before the 259th District Court in Jones and Shackelford counties and shall perform all the duties imposed and have all the authority conferred on district attorneys by the general laws of this state.

258th Judicial District

Sec. 4.007. (a) The office of district attorney for the 258th Judicial District is created.

(b) The district attorney shall represent the state in all felony cases before the 258th District Court in Polk, San Jacinto, and Trinity counties and shall perform all the duties imposed and have all the authority conferred on district attorneys by the general laws of this state.

[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; Acts 1977, 65th Leg., p. 6, ch. 5, § 1, eff. April 1, 1977; Acts 1977, 65th Leg., p. 66, ch. 33, § 1, eff. March 29, 1977; Acts 1977, 65th Leg., p. 1314, ch. 519, § 1, eff. June 15, 1977; Acts 1977, 65th Leg., p. 2155, ch. 860, §§ 1 to 5, eff. Sept. 1, 1977.]

Acts 1977, 65th Leg., ch. 5, which by §§ 1 to 4 added §§ 3.044 to 3.066 of this article and amended subs. 15, 52 and 69 of art. 199, provided in §§ 5 and 6:

"Sec. 5. There is hereby appropriated to the Judiciary Section, Comptroller's Department from the General Revenue Fund for the fiscal year ending August 31, 1977, the sum of \$400,000, or as much of that amount as is necessary, to pay the salaries and expenses of the judges of the district courts created by this Act. The salaries and expenses shall be paid at the same rate as is provided for district judges in Chapter 743, Acts of the 64th Legislature, Regular Session, 1975.

"Sec. 6. The provisions of this Act take effect on April 1, 1977."

Acts 1977, 65th Leg., ch. 33, which by § 1 added § 4.005 to this article, provided in §§ 2 and 3:

"Sec. 2. The person serving as district attorney of the 52nd Judicial District on February 24, 1977, shall continue to serve as district attorney of the 52nd Judicial District for the term to which he was elected.

"Sec. 3. There is appropriated out of the general revenue fund the sum of \$10,334 for the period beginning April 1, 1977, and ending August 31, 1977, for the salary of the district attorney as provided in Section 1 of this Act."

Acts 1977, 65th Leg., ch. 860, which by §§ 1 to 9 added §§ 3.067 to 3.091, 4.006, 4.007, to this article, and amended subs. 130, § 1a; 90; 104, § 1 and 2 of art. 199, and subsecs. (b) and (f) of art. 326k-62, provided in §§ 10 and 11:

"Sec. 10. (a) The County Court of Jones County and the County Court of Shackelford County shall each retain and exercise the general jurisdiction of a probate court and shall retain the power to issue all writs necessary to enforce its jurisdiction and to punish contempts. The County Court of Jones County and the County Court of Shackelford County shall have no civil or criminal jurisdiction except as to final judgments rendered prior to the effective date of this Act.

"(b) The County Attorney of Jones County and the County Attorney of Shackelford County shall each represent the state in all misdemeanor cases before the district court in each of the respective counties.

"(c) All pending civil and criminal cases in the county courts in Jones and Shackelford counties are transferred to the district court with jurisdiction in each of those counties. All writs and process issued by or out of the county courts in civil or criminal cases are returnable to the next term of the district court in each of those counties. The county court in each of those counties retains jurisdiction over judgments in civil or criminal cases rendered prior to the effective date of this Act for enforcement by execution, order of sale, or other appropriate process. If, in a civil or criminal case on appeal from the county court in either of those counties, a judgment is entered by the court of civil appeals, the supreme court, or the court of criminal appeals, remanding the case for a new trial or for further proceedings, it shall be remanded to the district court.

"(d) Within 20 days after the effective date of this section, the clerk of the county court in each of the counties of Jones and Shackelford shall file with the clerk of the district court in each of those counties all original papers in cases transferred to the district court and all judges' dockets and certified copies of interlocutory judgments or other orders entered in the minutes of the county

court in cases so transferred. The district clerk in each county shall immediately docket the cases on the docket of the district court in each county. All the transferred cases shall stand on the docket of the court to which they are transferred in the same manner and place as each stands on the docket of the county court. It is not necessary that the district clerk refile any papers previously filed by the county clerk. The county clerk shall accompany the papers with a certified bill of cost and shall charge accrued fees due him against all cost deposits, with the remainder of the deposit paid to the district court as a deposit in the particular case for which it was deposited. Credit shall be given the litigants for all jury fees paid in the county court."

"Sec. 11. The provisions of Sections 1, 5, 6, 7, 8, 9, and 10 of this Act take effect on September 1, 1977. The provisions of Section 2 of this Act take effect on January 1, 1978. The provisions of Section 3 of this Act take effect on September 1, 1978. Except as provided in Subsection (b) of Section 3.090, Subsection (c) of Section 3.091, and Subsection (c) of Section 3.082 the provisions of Section 4 of this Act take effect on January 1, 1979. The remaining sections of the Act take effect according to the provisions of the Act."

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, Rockwall, 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, Burleson, 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, Stonewall, 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 5]

Assignment of Retired Regular, and Former Judges; Duty to Accept Assignment; Compensation

Sec. 5a. Retired district judges, as defined by Article 6228(b) of the Revised Civil Statutes of Texas, as amended, who have consented to be subject to assignment, all regular district judges in this state, and all former district judges who were elected at a general election or appointed by the governor; who have not been defeated for reelection; who have not been removed from office by impeachment, the Supreme Court, the governor upon address of the legislature, the State Judicial Qualifications Commission, or by the legislature's abolishment of the judge's court; who are not more than 70 years of age; and who certify to the presiding judge a willingness to

serve and to comply with the same prohibitions relating to the practice of law that are imposed on a retired judge by Section 7, Article 6228(b) of the Revised Civil Statutes of Texas, 1925, as amended or hereafter amended, may be assigned under the provisions of this Act by the presiding judge of the administrative judicial district wherein such assigned judge resides, and while so assigned, shall have all the powers of a judge thereof. When such district judge is so assigned by the presiding judge of an administrative judicial district to a court in the same administrative district, or to a court in another administrative district upon call of the presiding judge of such other administrative district and then reassigned as provided for in Section 6 of this Act, as amended, it shall be the duty of such judge so assigned or reassigned to serve in such court or administrative district to which he may be assigned, or reassigned unless for good cause presented by him in writing to the presiding judge of his administrative district, he shall be relieved of such assignment by such presiding judge; provided, however, after the presentation of a written statement declining such duty for good cause by such district judge, if the presiding judge refuses to relieve the district judge from the assignment, the district judge may, within five days after such refusal, petition the Chief Justice of the Supreme Court of the State of Texas to be relieved from such assignment for good cause, which said Chief Justice may at his discretion grant or refuse.

The compensation, salaries and expenses of such judges while so assigned or reassigned shall be paid in accordance with the laws of the state, except that the salary of such retired judges shall be paid out of moneys appropriated from the General Revenue Fund for such purpose in an amount representing the difference between all of the retirement benefits of such judge as a retired district judge and the salary and compensation from all sources of the judge of the court wherein he is assigned, and determined pro-rata for the period of time he actually sits as such assigned judge. On certification of the presiding judge of the administrative judicial district that a former district judge has rendered services under the provisions of this Act, the former district judge shall be paid, out of county funds and out of money appropriated by the legislature for such purpose, for services actually performed, the same amount of compensation, salary, and expenses that the regular judge is entitled to receive from the county and from the state for such service.

Assignment of Retired District Judges to Domestic Relations or Juvenile Courts

Sec. 5b. A retired district judge, as defined by Chapter 99, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 6228b, Vernon's Texas Civil Statutes), may be assigned by the presiding judge of the administrative judicial district

wherein the assigned judge resides to a domestic relations or juvenile court within the geographic limits of the respective administrative judicial district. A presiding judge may, with the consent of a retired district judge within his district, make an assignment outside of his judicial district with the specific authorization of the presiding judge of the district in which that assignment is made. The assignment shall be governed by all other provisions of this Act, except that the county wherein the domestic relations or juvenile court is located shall pay the salary stipulated in Section 5a of this Act.

Extended or Special Terms; Election Contests

Sec. 6. It shall be the duty of any district judge of any district within the Administrative District to diligently discharge the administrative responsibilities of office, to rule on a case within three months after that case has been taken under advisement, to extend the regular terms of his court, and to call special terms, when necessary to carry out the purposes of this Act and dispose of pending litigation. It shall also be the duty of a district judge in whose court an election contest or suit brought for the removal of a local official is filed to request the Presiding Judge of the Administrative Judicial District to assign a judge of the Administrative District who is not a resident of the county to hold a special or regular term of court in that county in order to dispose of such suits. A district judge shall request the Presiding Judge to assign a judge of the Administrative District to hear any motions to recuse such district judge from a case pending in his court. If the term be extended as herein provided no other term of the court in such district shall fail because of said extension, but such other terms may be opened and held as usual. The Presiding Judge of one Administrative District may call upon the Presiding Judge of another Administrative District to furnish judges to aid in the disposition of litigation pending in any judicial district within the Administrative District in which such judge so making the request has been designated as the Presiding Judge. For the trial of cases and the entry of orders and the disposition of other business necessary, the judge of any district in this State, or any District Judge sent to any district in this State by the Presiding Judge of an Administrative District, shall have power, by entering an order on the minutes, to convene a special term of the court for the disposition of the business coming before the district court.

[See Compact Edition, Volume 3 for text of 7 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; Acts 1977, 65th Leg., p. 248, ch. 115, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1060, ch. 389, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1194, ch. 460, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1988, ch. 794, § 1, eff. Aug. 29, 1977.]

TITLE 10A

ARCHITECTS

Art. 249a. Regulation of Practice of Architecture

[See Compact Edition, Volume 3 for text of 1 and 2]

Application of Sunset Act

Sec. 2a. The Board of Architectural Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1979.

¹Article 5429k.

[See Compact Edition, Volume 3 for text of 3 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; Acts 1977, 65th Leg., p. 1835, ch. 735, § 2.023, eff. Aug. 29, 1977.]

Art. 249c. Regulation of Practice of Landscape Architecture

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

Application of Sunset Act

Sec. 3a. The Texas State Board of Landscape Architects is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1979.

¹Article 5429k.

[See Compact Edition, Volume 2 for text of 4 to 12]

[Amended by Acts 1977, 65th Leg., p. 1835, ch. 735, § 2.024, eff. Aug. 29, 1977.]

TITLE 14

ATTORNEYS AT LAW

Article

304a. Application of Sunset Act [NEW].

320c. Liability of Attorney for Costs in Civil Proceeding [NEW].

Art. 304. Board of Examiners

The Board of Law Examiners shall consist of nine lawyers having the qualifications required of members of the Supreme Court. They shall be biennially appointed by the Supreme Court and shall each hold office for two years and be subject to removal by the Supreme Court for incompetency or inattention to duty.

[Amended by Acts 1977, 65th Leg., p. 320, ch. 153, § 1, eff. May 13, 1977.]

Art. 304a. Application of Sunset Act

The Board of Law Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1979.

[Added by Acts 1977, 65th Leg., p. 1834, ch. 735, § 2.018, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 310. Fees

The fee for any examination given by the Board shall be fixed by the Supreme Court, not to exceed \$75 for each candidate, which shall be paid to the clerk of said court at the time the application for examination is made. The money thus obtained shall be used to pay all legitimate expenses incurred in holding the examination; and as compensation to the members of the Board, under such regulations as shall be determined by the Supreme Court.

[Amended by Acts 1977, 65th Leg., p. 320, ch. 153, § 1, eff. May 13, 1977.]

Art. 320a-1. State Bar Act

[See Compact Edition, Volume 3 for text of 1 and 2]

Application of Sunset Act

Sec. 2A. The State Bar is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the State Bar is abolished, and this Act expires effective September 1, 1979.

¹ Article 5429k.

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; Acts 1977, 65th Leg., p. 1834, ch. 735, § 2.019, eff. Aug. 29, 1977.]

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

B. CODE OF JUDICIAL CONDUCT

Adopted July 25, 1974

Effective September 1, 1974

Amended to November 9, 1976

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.

(d) Oral arguments by the parties in the appellate courts may be recorded by electronic means upon the prior consent obtained from the court, or the chief justice or presiding judge as the case may be, where the means of recording will not distract the participants or impair the dignity of the proceedings.

Amended Nov. 9, 1976.

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 administration 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, political, 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, delegate, 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.

Amended Nov. 9, 1976.

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 committee, 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.

B. CODE OF JUDICIAL CONDUCT

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. 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.

B. Campaign Conduct:

(1) A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates:

(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 others 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. Any statement of qualifications, record, or performance in office should be such as can withstand the closest scrutiny as to accuracy, candor and fairness.

Amended Nov. 9, 1976.

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. Part-time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:

(1) is not required to comply with Canon 5C(2), D, E, F, G, and Canon 6C(a) and 6C(c).

(2) should not practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, or act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

C. 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, G, Canon 6C(a) and 6C(c).

(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.

D. 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, G, and Canon 6C(a) and 6C(c), 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, G, Canon 6C(a) and 6C(c).

Amended Sept. 24, 1974; Nov. 9, 1976.

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].
326k-79. Wood County Criminal District Attorney [NEW].
326k-80. Walker County Criminal District Attorney [NEW].
326k-81. Bastrop 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].
332b-2. County Attorney of Castro County; District Attorney of 64th Judicial District [NEW].
332b-3. County Attorney of Ochiltree County; District Attorney of 84th Judicial District [NEW].
332d. Prosecutors Coordinating Council [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-62. 42nd and 104th Judicial Districts; Criminal District Attorney

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

Election and Term

(b) At the general election in November 1970, and every four years thereafter, the qualified electors of Callahan and Taylor counties shall elect a criminal district attorney.

[See Compact Edition, Volume 3 for text of (c) to (e)]

Compensation and Expenses

(f) The criminal district attorney is entitled to the compensation paid district attorneys by the state which is provided in the general appropriations act. The Commissioners Court of Taylor County shall supplement his state compensation in an amount not less than \$4,000 a year. The commissioners court shall also determine and pay the salaries of all employees of the criminal district attorney. The commissioners court may reimburse the criminal district attorney and his employees for their reasonable and necessary expenses incurred while performing the duties of the office. The Commissioners Court of Callahan County shall reimburse Taylor County for a part of the salaries, office and travel expense as may be agreed upon by and between the commissioners courts.

[Amended by Acts 1977, 65th Leg., p. 2158, ch. 860, § 9, eff. Sept. 1, 1977.]

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-66. 69th Judicial District; Compensation of District Attorney; Assistants, Investigators and Stenographers

[See Compact Edition, Volume 3 for text of 1 and 2]

Compensation of Assistants, Investigators and Stenographers; Qualifications and Duties

Sec. 3. Each stenographer of the district attorney in the 69th Judicial District shall be paid an annual salary of not less than \$2,400 and not more than \$8,250 as determined by the commissioners courts affected thereby.

Each assistant and each investigator of the district attorney of the 69th Judicial District shall be paid an annual salary of not less than \$4,800 and not more than \$15,000, as determined by the commissioners courts affected thereby.

The assistants to the district attorney of the 69th Judicial District shall be duly and legally licensed to practice law in the State of Texas and shall be authorized to perform all duties imposed upon the district attorney provided by law. The investigators need not be duly and legally licensed to practice law in the State of Texas.

[See Compact Edition, Volume 3 for text of 4 to 6]

[Amended by Acts 1977, 65th Leg., p. 1457, ch. 595, § 1, eff. Aug. 29, 1977.]

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 pro-

vided 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

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."

Art. 326k-79. Wood County Criminal District Attorney

Creation of Office

Sec. 1. The constitutional office of Criminal District Attorney of Wood County is created to become effective on September 1, 1977.

Justifications; Oath; Bond; Residence

Sec. 2. (a) The Criminal District Attorney of Wood County shall be at least 25 years of age, a practicing attorney in this state for five years, and a resident of Wood County. He shall possess all the qualifications, take the oath of office, and give the bond required of district attorneys by the constitu-

tion and general laws of this state. He shall reside in Wood 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 Wood County or his assistants to be in attendance on each term and all sessions of the district courts in Wood County and all sessions and terms of the inferior courts of Wood 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 Wood 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 Wood County shall be paid in equal monthly or bimonthly installments, as determined by the Commissioners Court of Wood County, out of the officers' salary fund of Wood 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 115th Judicial District by the State of Texas and Marion, Wood, and Upshur counties.

Assistants, Investigators, etc.; Appointment and Compensation; Expenses

Sec. 5. The Criminal District Attorney of Wood 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 Wood 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 Wood County. In addition to the salary provided the criminal district attorney, his assistants, investigators, stenographers, clerks, and

other personnel, the Commissioners Court of Wood 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. The provisions contained in this section shall in no way limit the authority of the legislature to provide for assistant district attorneys, investigators, stenographers, secretaries, or any other staff out of state funds when the legislature deems such supplementation of staff to be necessary.

Oath of Assistants; Powers and Duties

Sec. 6. The assistant criminal district attorneys of Wood 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 Wood 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 Wood 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 Wood County and exercise any power and perform any duty conferred by law on the Criminal District Attorney of Wood County.

Private Practice of Law

Sec. 7. The Criminal District Attorney of Wood 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 Wood County. This section becomes effective on January 1, 1978.

Abolition of County Attorney's Office

Sec. 8. The office of County Attorney of Wood County is abolished from and after September 1, 1977.

County Attorney Commissioned; Election and Term; Vacancy

Sec. 9. (a) On September 1, 1977, the County Attorney of Wood County shall be commissioned as the Criminal District Attorney of Wood County. He 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 Wood County after the office is filled initially by the County Attorney of

Wood 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 1977, 65th Leg., p. 244, ch. 113, §§ 1 to 9, eff. Sept. 1, 1977.]

Section 10 of the 1977 Act provided:
 "If any paragraph, phrase, clause, or section of this statute be held invalid, it is expressly declared to be the intention of the legislature that it would not have passed the balance of the Act without such portion and the provisions of this Act are not severable."

Art. 326k-80. Walker County Criminal District Attorney

Creation of Office; Qualifications; Oath; Bond; Residence

Sec. 1. (a) The constitutional office of Criminal District Attorney of Walker County is created.

(b) The Criminal District Attorney of Walker County shall be at least 25 years of age, a practicing attorney in this state for three years, and a resident of Walker County for two years prior to his appointment or election. He shall possess all the qualifications, take the oath of office, and give the bond required of district attorney by the constitution and general laws of this state. He shall reside in Walker County during his term of office.

Powers and Duties; Private Practice of Law

Sec. 2. (a) The criminal district attorney or his assistants shall be in attendance on each term and all sessions of any district court in Walker County held for the transaction of criminal business and in attendance on each term and all sessions of the inferior courts of Walker County held for the transaction of criminal business, except the city court of an incorporated city. The criminal district attorney or his assistants shall exclusively represent the State of Texas in all criminal matters before such courts and shall represent Walker County in all matters before such courts or any other court where Walker County has pending business of any kind, matter, or interest. However, nothing in this Act shall be construed as requiring the criminal district attorney to represent the county in delinquent tax suits or condemnation proceedings or as preventing Walker County from retaining other legal counsel in civil matters at any time it sees fit to do so.

(b) The criminal district attorney 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 Walker 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 State of Texas.

(c) The criminal district attorney shall not engage in the private practice of law while serving as criminal district attorney.

Commission; Compensation; Payment

Sec. 3. The Criminal District Attorney of Walker County shall be commissioned by the governor. The Criminal District Attorney of Walker County 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 general fund of the county.

Assistants, Investigators, etc.; Appointment and Compensation; Expenses

Sec. 4. The Criminal District Attorney of Walker 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 Walker County may authorize. The assistants, investigators, stenographers, clerks, and other personnel shall serve at the will of the criminal district attorney. 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 installments from the general fund of Walker County. In addition to the salary provided the criminal district attorney, his assistants, investigators, stenographers, clerks and other personnel, the Commissioners Court of Walker 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; Duties

Sec. 5. An assistant criminal district attorney appointed under the provisions of this Act shall take the constitutional oath of office, shall be a person licensed to practice law in this state, and may perform any duty devolving on the Criminal District Attorney of Walker County.

Abolition of County Attorney's Office

Sec. 6. The office of County Attorney of Walker County is abolished from and after the effective date of this Act.

Appointment; Election and Term; Vacancy

Sec. 7. (a) On the effective date of this Act, the governor shall appoint a Criminal District Attorney of Walker County, who shall hold office until the next general election and until his successor is duly elected and has qualified.

(b) At the general election in 1978 and every four years thereafter, this officer shall be elected to 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 for Walker 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.

District Attorney of 12th Judicial District

Sec. 8. (a) From and after the effective date of this Act, the District Attorney of the 12th Judicial District shall only represent the State of Texas in the counties of Grimes, Madison, Leon, and Trinity. The provisions of this Act apply only to Walker County and do not affect the office of district attorney or the duties and powers of the district attorney in the counties of Grimes, Madison, Leon, and Trinity. The District Attorney of the 12th Judicial District shall continue to fulfill the duties of the district attorney in the counties of Grimes, Madison, Leon and Trinity, but his duties in the county of Walker are divested from him and invested in the Criminal District Attorney of Walker County.

(b) From and after the effective date of this Act, the District Attorney of the 12th Judicial District shall only stand for election and be elected from the counties of Grimes, Madison, Leon, and Trinity.

Effective Date

Sec. 9. The effective date of this Act is September 1, 1977.

[Acts 1977, 65th Leg., p. 857, ch. 323, §§ 1 to 9, eff. Sept. 1, 1977.]

Art. 326k-81. Bastrop County Criminal District Attorney

Creation of Office; Qualifications; Oath; Bond

Sec. 1. The constitutional office of Criminal District Attorney of Bastrop County is hereby created. The Criminal District Attorney of Bastrop County shall possess all the qualifications, take the oath, and give the bond required by the constitution and laws of this state of other district attorneys.

Appointment; Election and Term; Abolition of County Attorney's Office

Sec. 2. On the effective date of this Act, the Governor of Texas shall appoint a Criminal District Attorney of Bastrop County, who shall hold office until the next general election and until his successor is duly elected and has qualified. The Criminal District Attorney of Bastrop County shall be elected by the qualified voters of Bastrop County at the general election in November, 1978, and every four years thereafter. The office of County Attorney of Bastrop County is abolished from and after the effective date of this Act.

Duties; Fees, Commissions and Perquisites

Sec. 3. It shall be the duty of the Criminal District Attorney of Bastrop County or his assistants as herein provided to be in attendance on each term and all sessions of the district court in Bastrop County and all of the sessions and terms of the inferior courts of Bastrop County held for the transaction of criminal business and to exclusively represent the State of Texas in all criminal matters pending before such courts and any other court where Bastrop County has pending business of any kind, matter, or interest. In addition to the specified powers given and duties imposed upon him by this Act, he shall have all powers, duties, and privileges within Bastrop County as are now by law conferred, or which may hereafter be conferred, 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 now or may hereafter be provided by law for similar services rendered by the district and county attorneys of this state.

Compensation; Payment; Private Practice of Law

Sec. 4. The Criminal District Attorney of Bastrop County 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 the county, if adequate, and if inadequate, the commissioners court shall transfer the necessary funds from the general fund of the county to the officers' salary fund. The criminal district attorney is prohibited from any private practice of law without regard to whether or not he receives any compensation therefor.

Assistants and Stenographers; Appointment and Compensation; Expenses

Sec. 5. (a) The criminal district attorney may appoint such assistant criminal district attorneys as the commissioners court may authorize. An assistant criminal district attorney shall be paid a salary fixed by the criminal district attorney with the approval of the commissioners court. In addition to the salaries paid the criminal district attorney and his assistants, the commissioners court may allow the criminal district attorney and his assistants such expenses as within the discretion of the court seem reasonable, which expenses shall be paid as provided by law for other such claims of expenses.

(b) The criminal district attorney may employ such stenographers as the commissioners court may authorize and fix their salaries, with the approval of the commissioners court.

(c) The salaries provided for in this section shall be paid by the county out of the officers' salary fund, if adequate, and, if inadequate, the commissioners court shall transfer the necessary funds from the general revenue fund to the officers' salary fund.

Oath of Assistants; Duties

Sec. 6. An assistant criminal district attorney shall take the constitutional oath of office, shall be licensed to practice law in this state, and may perform any duty devolving on the criminal district attorney.

District Attorney of 21st Judicial District

Sec. 7. (a) From and after the effective date of this Act, the District Attorney of the 21st Judicial District shall represent the State of Texas only in the counties of Washington, Lee, and Burleson. The provisions of this Act apply only to Bastrop County and do not affect the office of district attorney or the duties or powers of the district attorney in the counties of Washington, Lee, and Burleson. The District Attorney of the 21st Judicial District shall continue to fulfill the duties of the district attorney in the counties of Washington, Lee, and Burleson, but his duties in the County of Bastrop are divested from him and invested in the Criminal District Attorney of Bastrop County.

(b) From and after the effective date of this Act, the District Attorney of the 21st Judicial District shall only stand for election and be elected from the counties of Washington, Lee, and Burleson. The present district attorney for the 21st Judicial District shall continue in office as the district attorney in the counties of Washington, Lee, and Burleson until the general election in 1980 and until his successor is duly elected and has qualified.

[Acts 1977, 65th Leg., p. 1743, ch. 695, §§ 1 to 7, eff. Aug. 29, 1977.]

3. GENERAL PROVISIONS

Art. 332b. Denton, Collin, Grayson, Gregg, and Orange Counties; Compensation of Criminal District or County Attorney

Sec. 1. Denton 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. Repealed by Acts 1977, 65th Leg., p. 1866, ch. 742, § 3, eff. June 16, 1977.

[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; Acts 1977, 65th Leg., p. 1866, ch. 742, §§ 2, 3, eff. June 16, 1977.]

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."

Repealed § 1a related to state compensation for Lamar and Fannin county attorneys.

Art. 332b-1. Brazoria, Marion, Smith, Cameron, Castro, Terry, Ochiltree, Willacy, Cass, Lamar, Fannin, Red River, Crosby, Galveston, Fort Bend, Randall, Robertson, Falls, Freestone, Ellis, Limestone, Hidalgo and Rusk Counties; Compensation of Criminal District or County Attorney

Brazoria County, Marion County, Smith County, Cameron County, Castro County, Terry County, Ochiltree County, Willacy County, Cass County, Lamar County, Fannin County, Red River County, Crosby County, Galveston County, Fort Bend County, Randall County, Robertson County, Falls County, Freestone 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 amendment.

[Acts 1975, 64th Leg., p. 1853, ch. 578, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1866, ch. 742, § 1, eff. June 16, 1977.]

Art. 332b-2. County Attorney of Castro County; District Attorney of 64th Judicial District

(a) The County Attorney of Castro County shall represent the State of Texas in all matters pending before the district court in Castro County.

(b) On and after the effective date of this Act, the District Attorney of the 64th Judicial District shall represent the state only in the counties of Hale and Swisher. The district attorney shall continue to fulfill the duties of the district attorney in the counties of Hale and Swisher, but his duties in the county of Castro are divested from him and invested in the county attorney. On and after the effective date of this Act, the District Attorney of the 64th

Judicial District shall stand for election and be elected only from the counties of Hale and Swisher.

(c) The present District Attorney of the 64th Judicial District shall continue in office as the district attorney in the counties of Hale and Swisher until the general election in 1980 and until his successor is duly elected and has qualified.

[Acts 1977, 65th Leg., p. 1866, ch. 742, § 4, eff. June 16, 1977.]

Art. 332b-3. County Attorney of Ochiltree County; District Attorney of 84th Judicial District

(a) The County Attorney of Ochiltree County shall represent the State of Texas in all matters pending before the district court in Ochiltree County.

(b) On and after the effective date of this Act, the District Attorney of the 84th Judicial District shall represent the state only in the counties of Hansford and Hutchinson. The district attorney shall continue to fulfill the duties of the district attorney in the counties of Hansford and Hutchinson, but his duties in the county of Ochiltree are divested from him and invested in the county attorney. On and after the effective date of this Act, the District Attorney of the 84th Judicial District shall stand for election and be elected only from the counties of Hansford and Hutchinson.

(c) The present District Attorney of the 84th Judicial District shall continue in office as the district attorney in the counties of Hansford and Hutchinson until the general election in 1980 and until his successor is duly elected and has qualified.

[Acts 1977, 65th Leg., p. 1867, ch. 742, § 5, eff. June 16, 1977.]

Art. 332c. Representation of County Officials and Employees by District, County or Private Attorneys

Sec. 1. In this Act, "nonpolitical entity" means any person, firm, corporation, association, or other private entity, and does not include the state, a political subdivision of the state, a city, a special district, or other public entity.

Sec. 2. In any suit instituted by a nonpolitical entity against an official or employee of a county, the district attorney of the district in which the county is situated or the county attorney, or both, shall, subject to the provisions contained in Section 3, represent the official or employee of the county if the suit involves any act of the official or employee while in the performance of public duties.

Sec. 3. If additional counsel is necessary or proper for an official or employee provided legal counsel by Section 2 of this Act or if it reasonably appears that the act complained of may form the basis for the filing of a criminal charge against the official or

employee, the county commissioners court shall employ and pay private counsel.

Sec. 4. Nothing in this Act requires a county official or employee to accept the legal counsel provided for him in this Act.

[Amended by Acts 1977, 65th Leg., p. 1116, ch. 414, § 1, eff. Aug. 29, 1977.]

Art. 332d. Prosecutors Coordinating Council

Purpose of Act

Sec. 1. The Legislature of the State of Texas finds and declares that a uniform quality of prosecution will aid in improving the efficiency and effectiveness of the state's criminal justice system. The legislature recognizes that the prosecutor performs an executive function which has a significant effect on the judicial branch and on law enforcement. To this end, it is the purpose of this Act to provide a centralized agency capable of delivering technical assistance, educational services, and professional development training to the prosecutors of Texas and their assistants and to improve the administration of criminal justice through professionalization of the prosecuting attorney's office.

Creation

Sec. 2. There is hereby created the Texas Prosecutors Coordinating Council, hereinafter referred to as the "council."

Membership; "Prosecuting Attorney" Defined

Sec. 3. (a) The council shall be composed of nine members, selected as follows:

(1) four citizens of the State of Texas, who are not licensed to practice law, appointed by the Governor of Texas, with the advice and consent of the senate. In making such appointments, the governor shall give due consideration to geographical areas of the state and their population diversities;

(2) the president of the Texas District and County Attorneys Association; and

(3) four incumbent, elected prosecuting attorneys to be selected by the membership of the Texas District and County Attorneys Association, at least one each of whom shall be a county attorney, a district attorney, and a criminal district attorney.

(b) For purposes of this Act, "prosecuting attorney" means the person who holds the office of county attorney, district attorney, or criminal district attorney, and represents the State of Texas in criminal cases. The duties of prosecuting attorneys who are members of the council shall be additional to those of their elected position, and membership on the council shall not constitute dual officeholding.

Terms

Sec. 4. Each member of the council, other than the president of the Texas District and County Attorneys Association, shall serve overlapping four-year terms. Initially, two of the citizens appointed by the governor and two of the prosecuting attorneys shall serve a two-year term. The terms of the members shall begin January 1 following the effective date of this Act, and each member shall continue to serve until his successor has been appointed.

Vacancies

Sec. 5. Vacancies on the council shall be filled in the same manner as the original appointment. A member appointed to fill a vacancy created other than by expiration of a term shall be appointed for the unexpired term of the member he is to succeed. Any member may be reappointed for additional terms. If a member who is a prosecuting attorney ceases to be a prosecuting attorney, a vacancy on the council shall exist.

Expenses

Sec. 6. Members of the council shall serve without compensation but may be entitled to their actual expenses in attending meetings and in the performance of their duties hereunder.

Meetings; Officers; Quorum; Executive Director

Sec. 7. (a) The council shall meet at least twice each year and shall hold such other meetings as may be necessary. The president of the Texas District and County Attorneys Association shall serve as chairman of the council, and the council shall designate from among its members a vice-chairman who shall serve a one-year term and who may be reelected. The chairman shall preside over the meetings, and in his absence the vice-chairman shall preside. The council shall establish its own procedures with respect to its meetings, and five members shall constitute a quorum for the transaction of business. A majority vote of the members present and voting shall be required for approval of any action authorized by this Act.

(b) The council shall appoint an executive director who shall be an attorney licensed by the Supreme Court of Texas. The executive director shall perform the functions and duties assigned him by the council and shall represent the council in all cases in the courts of the state or of the United States in which the council is a party.

Duties

Sec. 8. It shall be the duty of the council to:

- (1) develop and adopt minimum standards for the operation of prosecuting attorneys' offices;
- (2) approve courses for in-service training and professional development of prosecuting attorneys, their assistants, and staff;

(3) cooperate and coordinate with the Texas Judicial Council to improve the maintenance and reporting of criminal justice statistics;

(4) accept and investigate complaints of prosecuting attorney incompetency and misconduct;

(5) receive and consider suggestions to improve the administration of criminal justice and to investigate and report upon such matters as may be referred to the council by the governor or the legislature;

(6) coordinate with the Texas District and County Attorneys Association to carry out the provisions and purposes of this Act;

(7) respond to requests for technical assistance from the various prosecuting attorneys; and

(8) report to the governor and the legislature on or before December 1 of each year as to all its proceedings, recommended changes in jurisdictions, needed funding for local offices, and other matters to improve local prosecution within the state.

Powers

Sec. 9. The council may:

(1) respond to the request of a judge for recommendations regarding the appointment of a special prosecutor in case of disqualification of the prosecuting attorney;

(2) enter into agreements with other public or private agencies or organizations to implement the intent and purpose of this Act;

(3) accept funds, grants, and gifts from any public or private source to implement this Act;

(4) employ such staff and clerical assistants as necessary to fulfill its duties and responsibilities; and

(5) take such other action as may be appropriate for the improvement and more efficient administration of criminal justice.

Reprimand, Disqualification, or Removal from Office

Sec. 10. (a) A prosecuting attorney may be reprimanded, disqualified, or removed from office as hereinafter provided.

(b) For purposes of this Act:

(1) "incompetency" means:

(A) gross ignorance or neglect of official duty;

(B) physical or mental defect which prohibits the prompt or proper discharge of official duties; or

(C) failure to maintain the qualifications required by law for election to the office.

(2) "misconduct" means:

(A) any unlawful behavior defined in Chapter 39 of the Penal Code;

(B) any act which is a felony or a misdemeanor involving moral turpitude; or

(C) willful or persistent conduct which is clearly inconsistent with the proper performance of official duties.

(c) A prosecuting attorney is disqualified from performing the duties and functions or exercising the privileges of his office when a petition for removal from office has been filed against him as provided in this Act.

(d) A prosecuting attorney shall be suspended from office when:

(1) he has been disbarred or suspended from the practice of law in the State of Texas, whether through trial or upon agreement;

(2) he has been found guilty in a court of competent jurisdiction of any felony or any misdemeanor involving moral turpitude;

(3) a finding of incompetency or misconduct following a trial on the merits of a petition for removal.

(e) A prosecuting attorney shall be removed from office upon final adjudication or conviction for any cause of action which was the basis for his suspension.

(f)(1) During a period of disqualification, the prosecuting attorney shall be entitled to receive the compensation provided by law for such office but shall be disqualified from the performance of any official duties imposed upon his office by law or exercising any privilege incident thereto.

(2) During a period of suspension, the prosecuting attorney shall not be entitled to any compensation provided by law for his office and shall be disqualified from the performance of any official duties imposed upon his office by law or exercising any privilege incident thereto. If the trial court judgment which causes a suspension is upon final determination overturned, then he shall be entitled to receive as compensation an amount equal to the total compensation he would have received during the period of such suspension.

(g)(1) After investigation of a complaint of prosecutor incompetency or misconduct, the council may, in its discretion, issue a private reprimand, order a hearing to be held before the council, or request the supreme court to appoint a master to hold a hearing.

(2) The supreme court shall by rule provide for the procedure before the council and masters in hearings relating to the investigation of complaints of prosecuting attorney incompetency or misconduct, consistent with this Act and due process of law.

(3) In the conduct of investigations or hearings, any member of the council or the master may administer oaths and issue subpoenas for the attendance of witnesses and to compel testimony and the

production of books, records, papers, accounts, and documents relevant to any investigation or hearing. Orders for attendance of witnesses, testimony, or production of evidence shall be enforceable by contempt proceedings in the district court.

(4) It shall be the duty of all law enforcement officers to serve process and execute all lawful orders of the council or master. Such process and orders may also be served by any other person designated by the master, the council, or their authorized representative.

(5) In any investigation or hearing, process shall extend to all parts of the state, and each witness, other than an officer or employee of the state or a political subdivision, shall receive the same fees and mileage as allowed witnesses in civil cases.

(6) In any investigation or hearing, the council or master may order the deposition of any person be taken in accordance with the Texas Rules of Civil Procedure.

(h) Upon the appointment of a master, notice shall be given to the prosecuting attorney who is the subject of any complaint or investigation, specifying the matters under investigation and the complaint against him and setting a formal hearing for the first Monday next after the expiration of 10 days after the service thereof.

(i) After the conclusion of the hearing, the master shall file with the council a statement of his findings of fact, together with a complete transcript of all proceedings had in the cause. Such findings and transcripts shall be filed with the council not later than 30 days after the date set for the hearing to commence. For good cause shown, the council may, in its discretion, extend the time for filing such findings and transcripts.

(j) All proceedings and records before the council or a master shall be confidential and privileged until such time as they are introduced in evidence in any proceeding for removal.

(k) If, after examining the records and proceedings before it, the council finds by majority vote of the council membership good cause therefor, it shall cause to be filed in the district court of the county in which the prosecuting attorney resides a petition for removal. Such petition shall be filed in the name of the State of Texas and docketed on the civil docket of the court. Such petition shall allege incompetency or misconduct, together with the facts which form the basis of the allegations. The trial on a petition for removal shall proceed in accordance with the Texas Rules of Civil Procedure and shall have priority on the docket of the court.

(l) When a petition for removal is filed pursuant to this section, the judge of the court in which it is filed shall request the appointment of a special judge who shall hear the case. Upon appointment,

the special judge shall appoint an attorney to prosecute the case, such counsel to be selected from a list of not less than five qualified attorneys submitted by the council.

(m) Upon disqualification or suspension of a prosecuting attorney, the duties of his office shall be performed by a prosecuting attorney pro tem as otherwise provided by law.

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.

Effect of Constitutional Amendment

Sec. 12. Should the voters of Texas approve a constitutional amendment giving the Judicial Qualifications Commission jurisdiction over prosecuting attorneys covered by this Act, then the powers, duties, and authority granted by this Act to the Texas Prosecutors Coordinating Council shall be vested in the Judicial Qualifications Commission to the extent that said powers, duties, and authority do not conflict with the powers, duties, and authorities of the commission established by law and the Texas Constitution. If such powers, duties, and authority are transferred from the Texas Prosecutors Coordinating Council to the Judicial Qualifications Commission, then the existence of the Texas Prosecutors Coordinating Council shall terminate.

[Acts 1977, 65th Leg., p. 917, ch. 345, §§ 1 to 12, eff. Aug. 29, 1977.]

TITLE 16

BANKS AND BANKING

CHAPTER ONE. SCOPE OF ACT, DEFINITIONS, FINANCE COMMISSION AND STATE BANKING BOARD

Article

342-103a. Application of Sunset Act [NEW].

Art. 342-102. Definitions

As used in this code the following terms, unless otherwise clearly indicated by the context, have the meanings specified below:

"Code"—The Texas Banking Code of 1943.

"Banking Department"—The Banking Department of Texas.

"Finance Commission" or "Commission"—The Finance Commission of Texas.

"Banking Section"—The Banking Section of The Finance Commission of Texas.

"Building and Loan Section"—The Building and Loan Section of The Finance Commission of Texas.

"Commissioner"—The Banking Commissioner of Texas.

"Deputy Commissioner"—The Deputy Banking Commissioner of Texas.

"Departmental Examiner"—The Departmental Bank Examiner of The Banking Department of Texas.

"Examiner"—Bank Examiner of The Banking Department of Texas.

"Assistant Examiner"—Assistant Bank Examiner of The Banking Department of Texas.

"State Bank"—Any corporation hereafter organized under this Code, and any corporation heretofore organized under the laws of the State of Texas, and which was, prior to the effective date of this Act,¹ subject to the provisions of Title 16 of the Revised Civil Statutes of Texas, 1925, as amended,² including banks, trust companies, bank and trust companies, savings banks and corporations subject to the provisions of Chapter 9, Title 16 of the Revised Civil Statutes of Texas, 1925, as amended.³

"Director, officer or employee"—Director, officer or employee of a state bank.

"Board"—Board of directors of a state bank.

"National Bank"—Any banking corporation organized under the provisions of Title 12, United States Code, Section 21 (U.S.Rev.Statutes, Section 5133) and the amendments thereto.⁴

"State Building and Loan Association" or "State Association"—Any building and loan or savings and loan association heretofore or hereafter organized under the laws of this State.

"Federal Savings and Loan Association"—Any savings and loan association heretofore or hereafter organized under the laws of the United States of America.

"District Court"—A district court of the county in which the bank involved is domiciled.

"City"—City, village, town, or similar community.

"Capital"—The common capital stock.

"Chapters and Articles"—Chapters and articles of this Code.

"Bank Holding Company"—A company defined as a bank holding company by Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C., Sec. 1841).⁵

"Bank Holding Company Act of 1956"—The Federal Bank Holding Company Act of 1956, as amended, P.L. 84-511 (12 U.S.C., Sec. 1841 et seq.).⁶

[Amended by Acts 1977, 65th Leg., p. 1614, ch. 631, § 1, eff. June 15, 1977.]

¹ Effective 90 days after May 11, 1943, date of adjournment.

² Former art. 342 et seq.

³ Former art. 542 et seq.

⁴ 12 U.S.C.A. § 21.

⁵ 12 U.S.C.A. § 1841.

⁶ 12 U.S.C.A. § 1841 et seq.

Art. 342-103a. Application of Sunset Act

The Finance Commission of Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1983.

[Added by Acts 1977, 65th Leg., p. 1841, ch. 735, § 2.065, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 342-115. State Banking Board—Members—Duties—Rules of Practice—Appeal

[See Compact Edition, Volume 3 for text of 1 to 4]

5. The State Banking Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1983.

[Amended by Acts 1977, 65th Leg., p. 1842, ch. 735, § 2.071, eff. Aug. 29, 1977.]

¹ Article 5429k.

CHAPTER TWO. THE BANKING DEPARTMENT OF TEXAS

Article

342-201a. Application of Sunset Act [NEW].

342-208a. Examination of Nonbanking Affiliates [NEW].

Art. 342-201a. Application of Sunset Act

The office of Banking Commissioner is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished effective September 1, 1983.

[Added by Acts 1977, 65th Leg., p. 1842, ch. 735, § 2.070, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 342-205. Savings and Loan Department—Savings and Loan Commissioner—Powers and Duties

[See Compact Edition, Volume 2 for text of (a) to (i)]

(j) The office of Savings and Loan Commissioner is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished effective September 1, 1983.

[Amended by Acts 1977, 65th Leg., p. 1841, ch. 735, § 2.067, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 342-208a. Examination of Nonbanking Affiliates

The Commissioner may examine the affiliates of a state bank to the extent it is necessary to safeguard the interest of depositors, creditors, and stockholders of the bank and to enforce the provisions of The Texas Banking Code of 1943. The Commissioner may conduct the examination in conjunction with any examination of the state bank or affiliate conducted by any other state or federal regulatory authority. For the purpose of this Article, "affiliate" means any bank holding company of which the state bank is a subsidiary and any nonbanking subsidiary of that bank holding company, as "subsidiary" is defined by Section 2 of the federal Bank Holding Company Act of 1956 (12 U.S.C., Sec. 1841(d), as amended).

[Added by Acts 1977, 65th Leg., p. 1617, ch. 632, § 1, eff. Aug. 29, 1977.]

CHAPTER THREE. INCORPORATION, MERGER, REORGANIZATION, PURCHASE OF ASSETS OF ANOTHER BANK, DISBURSING AGENT, AMENDMENT OF ARTICLES OF ASSOCIATION OF STATE BANKS, AND CONVERSION

Art. 342-304. Articles of Association

The articles of association of a state bank shall be signed and acknowledged by each incorporator and shall contain:

1. The name of the corporation.
2. The city or town and the county of its domicile.
3. Such of the powers listed in Article 1 of this Chapter as it shall choose to exercise.
4. The capital and the denomination and number of shares.
5. The number of directors.
6. The period of duration, which may be perpetual.

[Amended by Acts 1977, 65th Leg., p. 1965, ch. 784, § 1, eff. Aug. 29, 1977.]

Art. 342-305. Application for and Granting of Charters—Approval

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

B. Applicants desiring to incorporate a State bank shall file with the Banking Commissioner an application for charter, the proposed Articles of Association, a list of shareholders, and a written list of information as may tend to establish the above conditions of incorporation, all upon official forms prepared and prescribed by the Commissioner. All persons subscribing to the capital stock of the proposed bank shall sign and verify under oath a statement of such stock subscribed, and which statement shall truly report the number of shares and the amount to be paid in consideration; the names, identity, title and address of any other persons who will be beneficial owners of such stock or otherwise share an interest or ownership in said stock, or who will pay any portion of the consideration; whether said stock is to be pledged as security for any loan; whether a loan has been committed or is intended for the subscription and purchase of said stock, and if so, the name and address of such person or corporation which is intended to loan funds for said purchase; the names of any cosigners, guarantors, partners or other persons liable for the repayment of any loan financing the purchase of such stock. Provided, however, that the verified statement of subscribers to stock shall be confidential and privileged from public disclosure prior to the final determination by the Board of the application for a charter, unless the Board shall find that public disclosure prior to public hearing and final determination of

the charter application is necessary to a full development of the factual record. Subject to the above qualification, the list of incorporators and proposed officers and directors who support the application for a charter shall be available to public inspection.

C. The Commissioner shall require deposit of such charter fees as are required by law and shall proceed to conduct a thorough investigation of the application, the applicants and their personnel, and the charter conditions alleged. The actual expense of such investigation and report shall be paid by the applicants, and the Commissioner may require a deposit in an estimated amount, the balance to be paid in full prior to hearing of the application. A written report of the investigation shall be furnished to the State Banking Board and shall be made available to all interested parties at their request.

D. Upon filing of the application, the Commissioner shall promptly set the time and place for public hearing of the application for charter, giving the applicants and such other banks in the same trade area reasonable notice thereof. After full and public hearing the Board shall vote and determine whether the necessary conditions set out in Section A above have been established. Should the Board, or a majority of the Board, determine all of the said conditions affirmatively, then the application shall be approved; if not, then the application shall be denied. If approved, and when the Commissioner receives satisfactory evidence that the capital has been paid in full in cash, the Commissioner shall deliver to the incorporators a certified copy of the Articles of Association, and the bank shall come into corporate existence. Provided however, that the State Banking Board may make its approval of any application conditional, and in such event shall set out such condition in the resolution granting the charter, and the Commissioner shall not deliver the certified copy of the Articles of Association until such condition has been met, after which the Commissioner shall in writing inform the State Banking Board as to compliance with such condition and delivery of the Articles of Association.

E. The provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) governing contested cases do not apply to charter applications filed for the purpose of assuming the assets and liabilities of any bank deemed by the Commissioner to be in an unsafe condition.

[Amended by Acts 1977, 65th Leg., p. 1965, ch. 784, § 2, eff. Aug. 29, 1977.]

Art. 342-314. Change of Domicile

No state bank may change its domicile to a location outside the county where it is located. No state bank may change its domicile to another location in the same county without first having received ap-

proval for such change from the State Banking Board in the manner provided for the approval of an original application for a charter. Notwithstanding the above provisions, a bank which is domiciled in an incorporated or unincorporated city located in two or more counties may change its domicile to any place located within the county of its domicile or within the same city after receiving the approval of the State Banking Board as above provided.

[Amended by Acts 1977, 65th Leg., p. 25, ch. 10, § 1, eff. March 10, 1977.]

CHAPTER FOUR. STOCK, STOCKHOLDERS, BY-LAWS, DIRECTORS, OFFICERS, EMPLOYEES

Article

342-401a. Transfer of Stock—Review by Commissioner [NEW].
342-411a. Exemption from Securities Law [NEW].

Art. 342-401a. Transfer of Stock—Review by Commissioner

A. No person may acquire any voting security of a state bank or of any corporation or other entity owning voting securities of a state bank if, after the acquisition, the person would own or possess the power to vote twenty-five per cent (25%) or more of the voting securities of the bank unless an application is filed with the Commissioner for his review of the proposed transaction and for his action, if any, as provided in this Article.

B. The application shall be on a form prescribed by the Commissioner and shall be made under oath. The application shall, except to the extent expressly waived by the Commissioner, contain the following information:

(1) the identity, personal history, business background and experience, and financial condition of each person by whom or on whose behalf the acquisition is to be made, including a description of the managerial resources and future prospects of each acquiring party and a description of any material pending legal or administrative proceedings in which he is a party;

(2) the terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(3) the identity, source, and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and arrangements, agreements, or understandings with such persons;

(4) any plans or proposals which any acquiring party making the acquisition may have to

liquidate the bank, to sell its assets or merge it with any company, or to make any other major changes in its business or corporate structure or management;

(5) the terms and conditions of any offer, invitation, agreement, or arrangement under which any voting security will be acquired and any contract affecting such security or its financing after it is acquired; and

(6) such other information that the Commissioner by rule shall require to be furnished in an application as well as any information that the Commissioner orders to be included in the particular application being filed.

The applicant shall pay the appropriate filing fee when he files the application. A "person" proposing to acquire voting securities subject to the provisions of this Article includes an individual, two (2) or more individuals acting in concert, any type of partnership, corporation, syndicate, trust, or any other organization, or any combination of the foregoing, and the information required by the Commissioner may be required of each member of the group, as directed by the Commissioner. Information obtained by the Commissioner under this Article is confidential and may not be disclosed by the Commissioner or any officer or employee of the Banking Department, except that the Commissioner may in his discretion, if he deems it necessary or proper to the enforcement of the laws of this state or the United States and to the best interest of the public, divulge such information to any department, agency, or instrumentality of the state or federal government, and provided that notice of the application, its date of filing, and the identity of all parties thereto shall be submitted to the Texas Register by the Commissioner upon receipt of the said application and shall be published in the next issue thereof following the date such information is received.

C. The Commissioner shall issue an order denying an application if he finds that:

(1) the acquisition would substantially lessen competition or would in any manner be in restraint of trade and would result in a monopoly or would be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the banking industry in any part of the State, unless he also finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served and that the proposed acquisition is not in violation of any law of this State or the United States;

(2) the poor financial condition of any acquiring party might jeopardize the financial stability of the bank being acquired;

(3) plans or proposals to liquidate or sell the bank or its assets are not in the best interest of the bank;

(4) the experience, ability, standing, competence, trustworthiness, or integrity of the applicant is such that the acquisition would not be in the best interest of the bank;

(5) the bank will not be solvent, have adequate capital structure, or be in compliance with the laws of this State after the acquisition;

(6) the applicant has failed to furnish all of the information pertinent to the application reasonably requested by the Commissioner; or

(7) the applicant is not acting in good faith.

D. If an application filed under this Article is not denied by the Commissioner within thirty (30) days after it is filed, the transaction may be consummated. The Commissioner may, before the expiration of the thirty-day period, give the applicant written notice that the application will not be denied, in which case the transaction may be consummated. Any agreement entered into by the applicants and the Commissioner as a condition that the application will not be denied is enforceable against the bank and is considered for all purposes an agreement under the provisions of this Code.

E. If the Commissioner issues an order denying an application, the applicant is entitled to a hearing if he requests one in writing no later than the thirtieth (30th) day after the day the application is filed or the fifteenth (15th) day after the day the application is denied, whichever date is later. After hearing the matter, the Commissioner shall, within thirty (30) days, enter a final order either affirming his denial or withdrawing his denial of the application. An applicant may not appeal the Commissioner's denial of an application or order affirming his denial until a final order is entered. Any applicant herein shall have the right to appeal such final order to the district court of Travis County, Texas, and not elsewhere, against the Banking Commissioner of Texas as defendant. Said action shall have precedence over all other causes on the docket of a different nature. The action shall not be limited to questions of law and the substantial evidence rule shall not apply, but such action shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Either party to said action may appeal to the appellate court having jurisdiction of said cause and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The Commissioner shall not be required to give any appeal bond in any cause arising hereunder. The filing of an appeal pursuant to this Article shall not

stay the order of the Commissioner adverse to the applicant.

F. This Article does not apply to:

(1) the acquisition of securities in connection with the exercise of a security interest or otherwise by way of foreclosure on default in the payment of a debt previously contracted for in good faith, provided that the person acquiring such securities does not vote the securities so acquired without having given written notice of such foreclosure to the Commissioner;

(2) transactions governed by Article 8, 9, or 10 of Chapter III of this Code;¹

(3) transactions requiring the prior approval of the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956 (12 U.S.C.A., Sec. 1841, et seq., and 26 U.S.C.A., Sec. 1101, et seq.);

(4) acquisitions by the owner of more than fifty per cent (50%) of the voting securities of the bank; or acquisitions of less than ten per cent (10%) of the voting securities of the bank in any one (1) year by the owner of twenty-five per cent (25%) or more, but not more than fifty per cent (50%), of those voting securities, provided that such acquisition does not result in the owner of twenty-five per cent (25%) or more acquiring fifty per cent (50%) or more of the voting securities;

(5) acquisitions or transfers by operation of law or by will or intestate succession, provided that the person acquiring such securities does not vote the securities so acquired without having given written notice of acquisition to the Commissioner; or

(6) any transaction which the Commissioner by rule or order may exempt as not being contemplated by the purposes of this Article or the regulation of which is not necessary or appropriate to achieve the objectives of this Article.

No provision of this Section shall excuse or diminish the notice requirements provided elsewhere in this Code.

G. No provision of this Article shall be construed to prevent the Commissioner from investigating, commenting upon, or seeking to enjoin or set aside any transfer of voting securities, whether the transfer is included within this Article or not, if the Commissioner deems the transfer to be against the public interest.

H. If it appears to the Commissioner that any person has committed or is about to commit a violation of this Article or any rule or order of the Commissioner adopted under it, the Attorney General on behalf of the Commissioner may apply to the district court of Travis County for an order enjoining the violation and for any other equitable relief as the nature of the case may require.

I. Any person who willfully and knowingly makes a materially false or misleading statement to the Commissioner with respect to the information required herein may be fined in an amount not exceeding Two Thousand Dollars (\$2,000), or be confined in jail for a period not to exceed one (1) year, or both. This provision is cumulative of other remedies contained herein.

J. The Commissioner by rule shall adopt a schedule of fees for the filing of applications and the holding of hearings. The schedule may be graduated so that those applications and hearings that are more difficult to review or administer will require a larger fee. An application fee is not refundable on denial of the application, but the Commissioner may refund a portion of the fee if the application is withdrawn before he completes review of it. Fees collected under this Article shall be retained by the Department and may be used only for expenses of the Department.

[Added by Acts 1977, 65th Leg., p. 664, ch. 250, § 1, eff. May 25, 1977.]

¹ Articles 342-308, 342-309, 342-310.

Art. 342-402. Stockholders' Meetings—Quorum—Voting

The stockholders of each state bank shall hold one regular meeting each year at the time prescribed in its bylaws and such special meetings as may be deemed necessary after notice as prescribed in the bylaws. At all stockholders' meetings the owners of a majority of the capital stock, present in person or by proxy, shall constitute a quorum. In the absence of a quorum, a stockholders' meeting may be adjourned from time to time without notice to the stockholders. Each stockholder of record shall be entitled to one vote for each share of stock owned by such stockholder, which vote may be cast in person or by proxy duly authorized in writing filed among the records of the bank. Stock owned of record by an estate shall be voted by its personal representative, and stock held in a fiduciary capacity shall be voted by the fiduciary, provided, however, that in the election of directors, shares of its own stock held solely by a state bank in any such capacity, whether registered in its own name in such capacity or in the name of its nominee, shall not be voted by the bank unless under the terms of the will or trust, the manner in which such shares shall be voted may be determined by a donor or beneficiary of the will or trust and unless such donor or beneficiary actually directs how such shares shall be voted, and shares of its own stock held by state bank and one or more persons in any such capacities may be voted by such other person or persons in the same manner as if such person or persons were the sole personal representative or sole trustee. Whenever shares of stock cannot be voted by reason of being held by the bank as sole personal representative or sole trustee, such

shares shall be excluded in determining whether matters voted upon by the shareholders were adopted by the requisite percentage of shares.

[Amended by Acts 1977, 65th Leg., p. 1169, ch. 447, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 Act provided as follows:

"Any provision or part of a provision in the Texas Banking Code of 1943, as amended (Article 342-101 et seq., Vernon's Texas Civil Statutes), which is in conflict with the provisions of this Act is hereby repealed to the extent of the conflict only."

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.]

Art. 342-411a. Exemption from Securities Law

A person who is an officer, director, or employee of a state bank or national bank domiciled in the state with less than five hundred (500) shareholders is exempt from the registration and licensing provisions of The Securities Act, as amended (Article

581-1 et seq., Vernon's Texas Civil Statutes), with respect to that person's participation in a sale or other transaction involving securities issued by the bank of which that person is an officer, director, or employee. An officer, director, or employee may not be compensated for services provided under this Article.

[Added by Acts 1977, 65th Leg., p. 1033, ch. 378, § 1, eff. June 10, 1977.]

CHAPTER FIVE. LOANS AND INVESTMENTS

Art. 342-507. Limit of Liability of Any One Borrower—Exceptions—Penalty

No state bank shall permit any person or any corporation to become indebted or in any other way liable to it in an amount in excess of twenty-five per cent (25%) of its capital and certified surplus. The phrase "indebted or in any other way liable" shall be construed to include liability as partner or otherwise. The above limitation shall not apply to the following classes of indebtedness or liability:

1. Liability as endorser or guarantor of commercial or business paper discounted by or assigned to the bank by the actual owner thereof who has acquired it in the ordinary course of business.
2. Indebtedness evidenced by bills of exchange or drafts drawn against actually existing values and secured by a lien upon goods in transit with shippers' order bills of lading or comparable instruments attached.
3. Indebtedness evidenced by notes or other paper secured by liens upon agricultural products, manufactured goods, or other chattels in storage in bonded warehouses or elevators with warehouse or elevator receipts attached, cotton yard tickets, signed by a bonded weigher, when the value of the security is not less than one hundred twenty-five per cent (125%) of the indebtedness, and the bank's interest therein is adequately insured against loss, with insurance policies or certificates of insurance attached.
4. Deposit in a reserve depository, or a Federal Reserve Bank.
5. Indebtedness of another state or national bank arising out of short-term loans when such loans are made out of the excess cash reserve funds of the lending bank and have settlement periods of less than one week.
6. Indebtedness arising out of the daily transaction of the business of any clearing house association in this State.
7. Bonds and other legally created general obligations of any State or of any county, city, municipality or political subdivision thereof and

indebtedness of the United States of America, or any instrumentality or agency of the United States Government.

8. Any portion of any indebtedness which the United States Government or any agency or instrumentality of the United States Government has unconditionally agreed to purchase or has unconditionally guaranteed as to payment of both principal and interest.

9. Liability under an agreement by a third party to repurchase from the bank an indebtedness that the United States Government or any agency or instrumentality of the United States Government has unconditionally agreed to purchase or has unconditionally guaranteed as to payment of both principal and interest, to the extent that the agreed repurchase price does not exceed the purchase price agreed to or value guaranteed by the United States, its agency or instrumentality.

A state bank may permit any person, partnership, association or corporation to become indebted or in any other way liable to it in an amount equal to or less than fifteen per cent (15%) of its capital and certified surplus in addition to any indebtedness or liability of such person, partnership, association or corporation to the bank in an amount not in excess of twenty-five per cent (25%) of its capital and certified surplus, when such additional indebtedness or liability to the bank is secured by bonds or notes of the United States issued since April 24, 1917, certificates of indebtedness of the United States, Treasury bills of the United States, or obligations fully guaranteed both as to principal and interest by the United States, the market value of which security is at all times not less than one hundred twenty per cent (120%) of such indebtedness or liability to the bank.

Any officer, director or employee of a state bank who knowingly violates or participates in the violation of any provision of this Article shall upon conviction be fined not more than Five Thousand Dollars (\$5,000) or confined in the State penitentiary not more than five (5) years, or both.
[Amended by Acts 1977, 65th Leg., p. 1167, ch. 446, § 1, eff. Aug. 29, 1977.]

Art. 342-508. Loan Fees Prohibited—Exception

No bank shall charge or collect any loan fee or any other charge, by whatever name called, for the granting of a loan unless authorized by law. Provided, however, a bank may require an applicant for a loan or discount to pay the cost of any abstract, attorney's opinion or title insurance policy, or other form of insurance, and filing or recording fees or appraisal fees. Expenses necessary or proper for the protection of the lender, and actually incurred in connection with the making of the loan may be

charged. In all loan transactions in which the amount loaned is \$100 or more and the loan period is one month or more, a bank may charge any borrower the reasonable value of services rendered in connection with the making of any loan, including the drawing of notes, the taking of acknowledgments and affidavits, the preparation of financial statements, and the investigation or analysis of the financial responsibility of the borrower or any endorser, surety or co-signer, in an amount agreed upon, but not to exceed \$15 for each loan transaction, which shall be in lieu of all interest and other charges which could otherwise be collected in connection with the loan. No bank shall induce or permit any person, or husband and wife, to be obligated directly or indirectly under more than one loan contract under this article at the same time for the purpose, or with the effect, of obtaining a higher authorized charge than would otherwise be permitted. The charge authorized herein shall not apply to any renewal or extension of an obligation on which the charge has been previously imposed; provided, however, that such renewal or extension may bear interest at the rate that is otherwise provided by law. The charge shall not apply to a loan transaction wherein the borrower applies all or a portion of the loan proceeds to discharge a prior loan made by the same lender to the same borrower and in connection with which the above charge was imposed.
[Amended by Acts 1977, 65th Leg., p. 1003, ch. 370, § 1, eff. Aug. 29, 1977.]

CHAPTER NINE. GENERAL PROVISIONS

Article

- 342-912. Acquisition of Bank or Holding Company under Federal Law—Notice to Commissioner—Recommendations of Commissioners.
342-913. Acquisition of Nonbanking Institution under Federal Law—Notice to Commissioner—Order and Appeal.

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 thou-

sand (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 provisions 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 July 4, November 11, 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. When the dates January 1, July 4, November 11, or December 25 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 July 4, November 11, or December 25 fall on Saturday, then the Friday immediately preceding such Saturday shall also be a legal holiday for all banking purposes on which each bank or trust company shall remain closed. When the dates January 1, July 4, November 11, or December 25 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 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 in addition to mandatory legal holidays, 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 Banking Department of Texas.

The filing of such copy of resolution as aforesaid with 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 perform-

ing 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, and issuing cashier's checks.

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; Acts 1977, 65th Leg., p. 210, ch. 103, §§ 1, 2, eff. Aug. 29, 1977.]

Art. 342-912. Acquisition of Bank or Holding Company under Federal Law—Notice to Commissioner—Recommendations of Commissioner

Sec. 1. A state bank, a national bank in the state, or a bank holding company seeking to acquire a state bank or national bank within the state, that submits an application for approval to the Board of Governors of the Federal Reserve System pursuant to Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1842), shall transmit a copy of the application, as and when finally accepted for filing by the board of governors, to the commissioner.

Sec. 2. If the application is made by a state bank or involves the acquisition of the voting shares or assets of a state bank, the commissioner, on receipt of the notice prescribed by Subsection (b) of Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1842(b)), shall respond in writing within the time limit prescribed by that subsection. The response shall set forth the views and recommendations of the commissioner concerning the application. If the commissioner disapproves the application, he shall, with the assistance of the attorney general, present evidence at the hearing held pursuant to

Subsection (b) of Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1842(b)).

Sec. 3. If the application is made by a national bank in the state or involves the acquisition of the voting shares or assets of a national bank in the state, the commissioner shall advise the Board of Governors of the Federal Reserve System of any views and recommendations he may have concerning the application and other material before the board of governors in connection with the application. If the commissioner recommends to the board of governors that the application be denied, he shall request that a hearing pursuant to Subsection (b) of Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1842(b)) be held. If the board of governors should grant such request, the commissioner shall, with the assistance of the attorney general, present evidence at the hearing as hereinabove provided. If the board of governors should deny such request, the commissioner is authorized and directed to pursue the remedies available to him as an aggrieved party in accordance with the provisions of Section 9 of the Bank Holding Company Act of 1956 (12 U.S.C. Section 1848).

[Added by Acts 1977, 65th Leg., p. 1615, ch. 631, § 2, eff. June 15, 1977.]

Art. 342-913. Acquisition of Nonbanking Institution under Federal Law—Notice to Commissioner—Order and Appeal

Sec. 1. A bank holding company doing business in the state that submits an application or notice to the Board of Governors of the Federal Reserve System concerning an acquisition or activity regulated by Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1843), other than an application or notice concerning an activity initiated prior to the effective date of this article, shall transmit a copy of the application or notice, as and when finally accepted for filing by the board of governors, to the commissioner. The commissioner may on his own motion order a public hearing on the matter. The commissioner shall order a hearing if the holding company requests a hearing in writing at the time it transmits the application or notice to the commissioner.

Sec. 2. After the close of the hearing, if one is held, the commissioner shall disapprove the acquisition or activity unless he finds that it can reasonably be expected to produce benefits to the public, such as greater convenience or increased competition, that outweigh possible adverse effects such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

Sec. 3. An acquisition or activity is approved if:

(1) the applicant does not request a hearing and the commissioner does not, within 30 days after the application or notice is filed, order that a hearing be held; or

(2) a hearing is held and the commissioner's final order approves the acquisition or activity.

Sec. 4. The Administrative Procedure and Texas Register Act¹ governs proceedings under this article, except that the final order of the commissioner approving or disapproving the acquisition or activity shall be rendered within 30 days after the hearing is closed.

Sec. 5. If it appears to the commissioner that any person has engaged in or is about to engage in an acquisition or activity subject to this article without complying with the provisions of this article or in violation of an order of the commissioner entered pursuant to this article, the attorney general on behalf of the commissioner may apply to the district court of Travis County for an order enjoining the acquisition or activity and for any other equitable relief the nature of the case may require. A "person" subject to the provisions of this section shall include an individual, two or more individuals acting in concert, any type of partnership, corporation, association, syndicate, trust, or any other organization, or any combination thereof.

[Added by Acts 1977, 65th Leg., p. 1615, ch. 631, § 2, eff. June 15, 1977.]

¹ Article 6252-13a.

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 institu-

tion 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

549a. Application of Sunset Act [NEW].

565b. Labeling and Sale of Honey, Honey Products and Imitation Honey [NEW].

Art. 549a. Application of Sunset Act

The office of State Entomologist is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1844, ch. 735, § 2.089, eff. Aug. 29, 1977.]

¹ Article 5429k.

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. 581-2. Creating the State Securities Board and Providing for Appointment of Securities Commissioner

[See Compact Edition, Volume 3 for text of A to E]

F. The State Securities Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1988.

[Amended by Acts 1977, 65th Leg., p. 1841, ch. 735, § 2.066, eff. Aug. 29, 1977.]

¹ Article 5429k.

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 isolat-

ed 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 condition 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 2514-2524, inclusive, Revised Civil Statutes of Texas as amended. 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; Acts 1977, 65th Leg., p. 865, ch. 327, § 1, eff. Aug. 29, 1977.]

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. 581-7. Permit or Registration for Issue by Commissioner; Information for Issuance of Permit or Registration

A. Qualification of Securities.

(1) No dealer, agent or salesman shall sell or offer for sale any securities issued after September 6, 1955, except those which shall have been registered by Notification under subdivision B or by Coordination under subdivision C of this Section 7 and except those which come within the classes enumerated in subdivisions A to S, both inclusive, of Section 5 of this Act, or subdivisions A to K, both inclusive, of Section 6 of this Act, until the issuer of such securities or a dealer registered under the provisions of this Act shall have been granted a permit by the Commissioner; and no such permit shall be granted by the Commissioner until the issuer of such securities or a dealer registered under the provisions of this Act shall have filed with the Commissioner a sworn statement verified under the oath of an executive officer or partner of the issuer, or of such registered dealer, and attested by the secretary or partner thereof, setting forth the following information:

a. The names, residences and post office addresses of the officers and directors of the company;

b. The location of its principal office and of all branch offices in this State, if any;

c. A copy if its articles of incorporation or partnership or association, as the case may be, and of any amendments thereto, if any; if a corporation, a copy of all minutes of any proceedings of its directors, stockholders or members relating to or affecting the issue of said security; if a corporation, a copy of its bylaws and of any amendments thereto; if a trustee, a copy of all instruments by which the trust is created and in which it is accepted, acknowledged or declared;

d. A statement showing the amount of capital stock, if any, and if no capital stock, the amount of capital of the issuer that is contemplated to be employed; the number of shares into which such stock is divided, or if not divided into shares of stock, what division is to be made or is contemplated; the par value of each share, or if no par stock, the price at which such security is proposed to be sold; the promotional fees or commissions to be paid for the sale of same, including any and all compensations of every nature that are in any way to be allowed the promoters or allowed for the sale of same; and how such compensation is to be paid, whether in cash, securities, service or otherwise, or partly of either or both; also, the amount of cash to be paid, or securities to be issued, given, transferred or sold to promoters for promotion or organization services and expenses, and the amount of promotion or organization services and expenses which will be assumed or in any way paid by the issuer;

e. Copies of certificates of the stock and all other securities to be sold, or offered for sale, together with application blanks therefor; a copy of any contract it proposes to make concerning such security; a copy of any prospectus or advertisement or other description of security prepared by or for it for distribution or publication;

f. A detailed statement prepared in accordance with generally accepted auditing standards and procedures and generally accepted accounting principles, showing all the assets and all the liabilities of the issuer, said statement to reflect the financial condition of the issuer on a day not more than ninety (90) days prior to the date such

statement is filed. Such statement shall list all assets in detail and shall show how the value of such assets was determined, that is, whether the value set forth in said statement represents the actual cost in money of such assets, or whether such value represents their present market value, or some other value than the actual cost in money, and shall show the present actual value of said assets; also, whether the value set forth in the statement is greater or less than the actual cost value in money and greater or less than the present market value of such assets. If any of the assets consist of real estate, then said statement shall show the amount for which said real estate is rendered for State and county taxes, or assessed for taxes. If any such assets listed shall consist of anything other than cash and real estate, same shall be set out in detail so as to give the Commissioner the fullest possible information concerning same, and the Commissioner shall have the power to require the filing of such additional information as he may deem necessary to determine whether or not the true value of said assets are reflected in the statement filed. Should any of the assets listed in said statement be subject to any repurchase agreement, or any other agreement of like character, by the terms of which the absolute ownership of, or title to said assets is qualified or limited in any way, then the terms and conditions of said agreement by which the absolute ownership of, or title to said assets is qualified or limited, as well as the amount and character of the assets subject thereto shall be fully stated. Said statement shall list all current liabilities, that is, all liabilities which will mature and become due within one year from the date of such application, and shall list separately from such current liabilities, all other liabilities, contingent or otherwise, showing the amount of those which are secured by mortgage or otherwise, the assets of the issuer which are subject to such mortgage, and the dates of maturity of any such mortgage indebtedness. Such application shall also include a detailed profit and loss statement, prepared in accordance with generally accepted auditing standards and procedures and generally accepted accounting principles, which shall cover the last three (3) years' operations of the issuer, if such issuer has been in operation for three (3) years, but if not, said profit and loss statement shall cover the time that said issuer has been operating. If said issuer has not been

operating, but is taking over a concern of any kind which has been previously operating, then a financial and profit and loss statement showing the operations of the concern thus taken over for a period of the last three (3) years next preceding the taking over of said concern shall be included in said statement; said profit and loss statement shall clearly reflect the amount of net profit or net loss incurred during each of the years shown.

B. Registration by Notification.

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

(2) Securities entitled to registration by notification shall be registered by the filing with the Commissioner by the issuer or by a registered dealer of a registration statement as required by subsection (a), and completion of the procedures outlined in subsection b hereof:

a. A registration statement in a form prescribed by the Commissioner signed by the applicant filing such statement and containing the following information:

1. Name and business address of main office of issuer and address of issuer's principal office, if any, in this state;

2. Title of securities being registered and total amount of securities to be offered;

3. Price at which securities are to be offered for sale to the public, amount of securities to be offered in this state, and amount of registration fee, computed as hereinafter provided;

4. A brief statement of the facts which show that the securities are entitled to be registered by notification;

5. Name and business address of the applicant filing statement;

6. Financial statements to include a certified profit and loss statement, a certified balance sheet, and certified statements of surplus, each to be for a period of not less than three (3) years prior to the date of registration. These financial statements shall reflect the financial condition of the issuer as of a date not more than ninety (90) days prior to the date of such filing with the Commissioner;

7. A copy of the prospectus, if any, describing such securities;

8. Filing of a consent to service of process conforming to the requirements of Section 8 of this Act, if the issuer is registering the securities and is not a resident of this state or is not incorporated under the laws of this state.

b. Such filing with the Commissioner shall constitute the registration of securities by notification and such registration shall become effective five (5) days after receipt of the registration statement and all accompanying papers by the Commissioner; provided that the Commissioner may in his discretion waive or reduce the five (5) days waiting period in any case where he finds no injury to the public will result therefrom. Upon such registration by notification, securities may be sold in this state by registered dealers and registered salesmen. Upon the receipt of a registration statement, prospectus, if any, payment of the filing fee and registration fee, and, if required, a consent to service of process, the Commissioner shall record the registration by notification of the securities described. Such registration shall be effective for a period of one (1) year and may be renewed for additional periods of one (1) year, if the securities are entitled to registration under this subsection at the time of renewal, by a new filing under this section together with the payment of the renewal fee of Ten Dollars (\$10.00).

c. If at any time, before or after registration of securities under this section, in the opinion of the Commissioner the information in a registration statement filed with him is insufficient to establish the fact that the securities described therein are, or were, entitled to registration by notification under this section, or that the registration information contains, or contained, false, misleading or fraudulent facts, he may order the applicant who filed such statement to cease and desist from selling, or offering for sale, such securities registered, or proposed to be registered, under provisions of this section, until there is filed with the Commissioner such further information as may in his judgment be necessary to establish the fact that such securities are, or were, entitled to registration under this section. The provisions of Section 24 of this Act as to hearing shall be applicable to an order issued hereunder.

C. Registration by Coordination.

(1) Any security for which a registration statement has been filed under the Federal Securities Act of 1933, as amended,¹ in connection with the same offering, may be registered by coordination. A registration statement under this section shall be filed with the Commissioner by the issuer or any registered dealer and shall contain the following information and be accompanied by the following documents:

a. Three copies of the prospectus filed under the Federal Securities Act together with all amendments thereto;

b. The amount of securities to be offered in this state;

c. The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

d. Any adverse order, judgment or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission;

e. A copy of the articles of incorporation and by-laws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

f. If the Commissioner requests any other information, or copies of any other documents, filed under the Federal Securities Act of 1933;

g. An undertaking to forward promptly all amendments to the federal registration statement, other than an amendment which merely delays the effective date; and

h. If the registration statement is filed by the issuer, or by a dealer who will offer such securities for sale as the agent of the issuer, and the issuer is not a resident of this state or is not incorporated under the laws of this state, a consent to service of process conforming to the requirements of Section 8.

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

[Amended by Acts 1977, 65th Leg., p. 870, ch. 327, §§ 2 to 4, eff. Aug. 29, 1977.]

¹ 15 U.S.C.A. § 77a et seq.

Art. 581-22. Advertising

A. It shall be unlawful and punishable with the penalties set forth in Section 29G of this Act for any person to issue, distribute, or publish, within this State, any circular, advertisement, pamphlet, prospectus, program or other matter, as to any security, unless such advertising is filed with the Commissioner prior to its use in this State and unless such advertising complies with the requirements hereinafter set forth in this Section 22; in addition, the State and purchasers shall have all other remedies provided for where the unlawful sales are made under this Act.

[See Compact Edition, Volume 3 for text of B to E]

[Amended by Acts 1977, 65th Leg., p. 873, ch. 327, § 5, eff. Aug. 29, 1977.]

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 con-

cerning 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. Subpoenas or Other Process in Investigations by Commissioner

The Commissioner may require, by subpoena or summons issued by the Commissioner, the attendance and testimony of witnesses and the production of any books, accounts, records, papers and correspondence or other records or indices showing the names and addresses of the stockholders (except such books of account as are necessary to the continued conduct of the business, which books the Commissioner shall have the right to examine or cause to be examined at the office of the concern and to require copies of such portion thereof as may be

deemed necessary touching the matter in question, which copies shall be verified by affidavit of an officer of such concern and shall be admissible in evidence as provided in Section 30 hereof), relating to any matter which the Commissioner has authority by this Act to consider or investigate, and for this purpose the Commissioner may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence; provided, however, that all information of every kind and nature contained therein shall be treated as confidential by the Commissioner and shall not be disclosed to the public except under order of court; but nothing in this section shall be interpreted to prohibit or limit the publication of rulings or decisions of the Commissioner nor shall this limitation apply to hearings provided for in Sections 24 and 25 of this Act. In case of disobedience of any subpoena, or of the contumacy of any witness appearing before the Commissioner, the Commissioner may invoke the aid of the District Court within whose jurisdiction any witness may be found, and such court may thereupon issue an order requiring the person subpoenaed to obey the subpoena or give evidence, or produce books, accounts, records, papers, and correspondence touching the matter in question. Any failure to obey such order of the court may be punished by such court as contempt thereof.

In the course of an investigation looking to the enforcement of this Act, or in connection with the application of a person or company for registration or to qualify securities, the Commissioner or Deputy Commissioner shall have free access to all records of the Board of Insurance Commissioners, including company examination reports to the Board and reports of special investigations made by personnel of the Board, as well as records and reports of and to any other department or agency of the state government. In the event, however, that the Commissioner or Deputy Commissioner should give out any information which the law makes confidential, the affected corporation, firm or person shall have a right of action on the official bond of the Commissioner or Deputy for his injuries, in a suit brought in the name of the state at the relation of the injured party.

The Commissioner may in any investigation cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed for depositions in civil actions under the laws of Texas.

Each witness required to attend before the Commissioner shall receive, for each day's attendance, the sum of Two Dollars (\$2.00), and shall receive in addition the sum of Ten Cents (10¢) for each mile traveled by such witness by the usual route going to and returning from the place where his presence is required. All disbursements made in the payment

of such fees shall be included in and paid in the same manner as is provided for the payment of other expenses incident to the administration and enforcement of this Act as hereinafter provided.

The sheriff's or constable's fee for serving the subpoena shall be the same as those paid the sheriff or constable for similar services. The fees, expenses and costs incurred at or in connection with any hearing may be imposed by the Commissioner upon any party to the record, or may be divided between any and all parties to the record in such proportions as the Commissioner may determine.

Any subpoena, summons, or other process issued by the Commissioner may be served, at the Commissioner's discretion, by the Commissioner, his authorized agent, a sheriff, or a constable.

The Commissioner may, at his discretion, disclose any confidential information in his possession to any governmental authority approved by Board rule; or to any quasi-governmental authority charged with overseeing securities activities which is approved by Board rule. The disclosure does not violate any other provision of this Act or any provision of Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

[Amended by Acts 1977, 65th Leg., p. 873, ch. 327, § 6, eff. Aug. 29, 1977.]

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 jurisdiction, 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. 581-33. Civil Liabilities

A. Liability of Sellers.

(1) Registration and Related Violations. A person who offers or sells a security in violation of Section 7, 9 (or a requirement of the Commissioner thereunder), 12, 23B, or an order under 23A of this Act is liable to the person buying the security from him, who may sue either at law or in equity for rescission or for damages if the buyer no longer owns the security.

(2) Untruth or Omission. A person who offers or sells a security (whether or not the security or transaction is exempt under Section 5 or 6 of this Act) by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, is liable to the person buying the security from him, who may sue either at law or in equity for rescission, or for damages if the buyer no longer owns the security. However, a person is not liable if he sustains the burden of proof that either (a) the buyer knew of the untruth or omission or (b) he (the offeror or seller) did not know, and in the exercise of reasonable care could not have known, of the untruth or omission. The issuer of the security (other than a government issuer identified in Section 6A) is not entitled to the defense in clause (b) with respect to an untruth or omission (i) in a prospectus required in connection with a registration statement under Section 7A, 7B, or 7C, or (ii) in a writing prepared and delivered by the issuer in the sale of a security.

B. Liability of Buyers. A person who offers to buy or buys a security (whether or not the security or transaction is exempt under Section 5 or 6 of this Act) by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, is liable to the person selling the security to him, who may sue either at law or in equity for rescission or for damages if the buyer no longer owns the security. However, a person is not liable if he sustains the burden of proof that either (a) the seller knew of the untruth or omission, or (b) he (the offeror or buyer) did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

C. Liability of Nonselling Issuers Which Register.

(1) This Section 33C applies only to an issuer which registers under Section 7A, 7B, or 7C of this Act, or under Section 6 of the U.S. Securities Act of 1933,¹ its outstanding securities for offer and sale by or for the owner of the securities.

(2) If the prospectus required in connection with the registration contains, as of its effective date, an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the issuer is liable to a person buying the registered security, who may sue either at law or in equity for rescission or for damages if the buyer no longer owns the securities. However, an issuer is not liable if it sustains the burden of proof that the buyer knew of the untruth or omission.

D. Rescission and Damages. For this Section 33:

(1) On rescission, a buyer shall recover (a) the consideration he paid for the security plus interest thereon at the legal rate from the date of payment by him, less (b) the amount of any income he received on the security, upon tender of the security (or a security of the same class and series).

(2) On rescission, a seller shall recover the security (or a security of the same class and series) upon tender of (a) the consideration he received for the security plus interest thereon at the legal rate from the date of receipt by him, less (b) the amount of any income the buyer received on the security.

(3) In damages, a buyer shall recover (a) the consideration he paid for the security plus interest thereon at the legal rate from the date of payment by him, less (b) the value of the security at the time he disposed of it plus the amount of any income he received on the security.

(4) In damages, a seller shall recover (a) the value of the security at the time of sale plus the amount of any income the buyer received on the security, less (b) the consideration paid the seller for the security plus interest thereon at the legal rate from the date of payment to the seller.

(5) For a buyer suing under Section 33C, the consideration he paid shall be deemed the lesser of (a) the price he paid and (b) the price at which the security was offered to the public.

(6) On rescission or as a part of damages, a buyer or a seller shall also recover costs.

(7) On rescission or as a part of damages, a buyer or a seller may also recover reasonable attorney's fees if the court finds that the recovery would be equitable in the circumstances.

E. Time of Tender. Any tender specified in Section 33D may be made at any time before entry of judgment.

F. Liability of Control Persons and Aiders.

(1) A person who directly or indirectly controls a seller, buyer, or issuer of a security is liable under Section 33A, 33B, or 33C jointly and severally with the seller, buyer, or issuer, and to the same extent as if he were the seller, buyer, or issuer, unless the controlling person sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

(2) A person who directly or indirectly with intent to deceive or defraud or with reckless disregard for the truth or the law materially aids a seller, buyer, or issuer of a security is liable under Section 33A, 33B, or 33C jointly and severally with the seller, buyer, or issuer, and to the same extent as if he were the seller, buyer, or issuer.

(3) There is contribution as in cases of contract among the several persons so liable.

G. Survivability of Actions. Every cause of action under this Act survives the death of any person who might have been a plaintiff or defendant.

H. Statute of Limitations.

(1) No person may sue under Section 33A(1) or 33F so far as it relates to Section 33A(1):

(a) more than three years after the sale; or

(b) if he received a rescission offer (meeting the requirements of Section 33I) before suit unless he (i) rejected the offer in writing within 30 days of its receipt and (ii) expressly reserved in the rejection his right to sue; or

(c) more than one year after he so rejected a rescission offer meeting the requirements of Section 33I.

(2) No person may sue under Section 33A(2), 33C, or 33F so far as it relates to 33A(2) or 33C:

(a) more than three years after discovery of the untruth or omission, or after discovery should have been made by the exercise of reasonable diligence; or

(b) more than five years after the sale; or

(c) if he received a rescission offer (meeting the requirements of Section 33I) before suit, unless he (i) rejected the offer in writing within 30 days of its receipt, and (ii) expressly reserved in the rejection his right to sue; or

(d) more than one year after he so rejected a rescission offer meeting the requirements of Section 33I.

(3) No person may sue under Section 33B or 33F so far as it relates to Section 33B:

(a) more than three years after discovery of the untruth or omission, or after discovery should have been made by the exercise of reasonable diligence; or

(b) more than five years after the purchase; or

(c) if he received a rescission offer (meeting the requirements of Section 33J) before suit unless he (i) rejected the offer in writing within 30 days of its receipt, and (ii) expressly reserved in the rejection his right to sue; or

(d) more than one year after he so rejected a rescission offer meeting the requirements of Section 33J.

I. Requirements of a Rescission Offer to Buyers. A rescission offer under Section 33H(1) or (2) shall meet the following requirements:

(1) The offer shall include financial and other information material to the offeree's decision whether to accept the offer, and shall not contain an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(2) The offeror shall deposit funds in escrow in a state or national bank doing business in Texas (or in another bank approved by the commissioner) or receive an unqualified commitment from such a bank to furnish funds sufficient to pay the amount offered.

(3) The amount of the offer to a buyer who still owns the security shall be the amount (excluding costs and attorney's fees) he would recover on rescission under Section 33D(1).

(4) The amount of the offer to a buyer who no longer owns the security shall be the amount (excluding costs and attorney's fees) he would recover in damages under Section 33D(3).

(5) The offer shall state:

(a) the amount of the offer, as determined pursuant to Paragraph (3) or (4) above, which shall be given (i) so far as practicable in terms of a specified number of dollars and a specified rate of interest for a period starting at a specified date, and (ii) so far as necessary, in terms of specified elements (such as the value of the security when it was disposed of by the offeree) known to the offeree but not to the offeror, which are subject to the furnishing of reasonable evidence by the offeree.

(b) the name and address of the bank where the amount of the offer will be paid.

(c) that the offeree will receive the amount of the offer within a specified number of days (not more than 30) after receipt by the bank, in form reasonably acceptable to the offeror, and in compliance with the instructions in the offer, of:

(i) the security, if the offeree still owns it, or evidence of the fact and date of disposition if he no longer owns it; and

(ii) evidence, if necessary, of elements referred to in Paragraph (a)(ii) above.

(d) conspicuously that the offeree may not sue on his purchase under Section 33 unless:

(i) he accepts the offer but does not receive the amount of the offer, in which case he may sue within the time allowed by Section 33H(1)(a) or 33H(2)(a) or (b), as applicable; or

(ii) he rejects the offer in writing within 30 days of its receipt and expressly reserves in the rejection his right to sue, in which case he may sue within one year after he so rejects.

(e) in reasonable detail, the nature of the violation of this Act that occurred or may have occurred.

(f) any other information the offeror wants to include.

J. Requirements of a Rescission Offer to Sellers. A rescission offer under Section 33H(3) shall meet the following requirements:

(1) The offer shall include financial and other information material to the offeree's decision whether to accept the offer, and shall not contain an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

(2) The offeror shall deposit the securities in escrow in a state or national bank doing business in Texas (or in another bank approved by the commissioner).

(3) The terms of the offer shall be the same (excluding costs and attorney's fees) as the seller would recover on rescission under Section 33D(2).

(4) The offer shall state:

(a) the terms of the offer, as determined pursuant to Paragraph (3) above, which shall be given (i) so far as practicable in terms of a specified number and kind of securities and a specified rate of interest for a period starting at a specified date, and (ii) so far as necessary, in terms of specified elements known to the offeree but not the offeror, which are subject to the furnishing of reasonable evidence by the offeree.

(b) the name and address of the bank where the terms of the offer will be carried out.

(c) that the offeree will receive the securities within a specified number of days (not more than 30) after receipt by the bank, in form reasonably acceptable to the offeror, and in compliance with the instructions in the offer, of:

(i) the amount required by the terms of the offer; and

(ii) evidence, if necessary, of elements referred to in Paragraph (a)(ii) above.

(d) conspicuously that the offeree may not sue on his sale under Section 33 unless:

(i) he accepts the offer but does not receive the securities, in which case he may sue within the time allowed by Section 33H(3)(a) or (b), as applicable; or

(ii) he rejects the offer in writing within 30 days of its receipt and expressly reserves in the rejection his right to sue, in which case he may sue within one year after he so rejects.

(e) in reasonable detail, the nature of the violation of this Act that occurred or may have occurred.

(f) any other information the offeror wants to include.

K. Unenforceability of Illegal Contracts. No person who has made or engaged in the performance of any contract in violation of any provision of this Act or any rule or order or requirement hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

L. Waivers Void. A condition, stipulation, or provision binding a buyer or seller of a security to waive compliance with a provision of this Act or a rule or order or requirement hereunder is void.

M. Saving of Existing Remedies. The rights and remedies provided by this Act are in addition to any other rights (including exemplary or punitive damages) or remedies that may exist at law or in equity. [Amended by Acts 1977, 65th Leg., p. 344, ch. 170, § 1, eff. Aug. 29, 1977.]

¹ 15 U.S.C.A. § 77f.

Section 2 of the 1977 amendatory act provided:

"Prior law exclusively governs all suits which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of this Act, except that no suit may be maintained to enforce any liability under prior law unless brought within any period of limitation which applied when the cause of action accrued, and in any event within five years after the purchase or sale."

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.]

Art. 581-35. Fees

The Commissioner shall charge and collect the following fees and shall daily pay all fees received into the State Treasury:

A. For the filing of any original or renewal application of a dealer, Thirty-five Dollars (\$35.00);

B. For the filing of any original or renewal application for each salesman, Fifteen Dollars (\$15.00);

C. For any filing to amend the registration certificate of a dealer or salesman, or issue a duplicate certificate, Five Dollars (\$5.00);

D. For the filing of any original, amended or renewal application to sell or dispose of securities, Ten Dollars (\$10.00);

E. For the examination of any original or amended application filed under Subsection A, B, or C of Section 7 of this Act, regardless of whether the application is denied, abandoned, withdrawn, or approved, a fee of one-tenth ($\frac{1}{10}$) of one percent (1%) of the aggregate amount of securities described and proposed to be sold to persons located within this state based upon the price at which such securities are to be offered to the public;

F. For certified copies of any papers filed in the office of the Commissioner, the Commissioner shall charge such fees as are reasonably related to costs; however, in no event shall such fees be more than those which the Secretary of State is authorized to charge in similar cases; and

G. For the filing of any application for approval of a stock exchange so that securities fully listed thereon will be exempt, a fee of Two Hundred and Fifty Dollars (\$250.00).

[Amended by Acts 1977, 65th Leg., p. 875, ch. 327, § 7, eff. Aug. 29, 1977.]

TITLE 20

BOARD OF CONTROL

CHAPTER ONE. GENERAL PROVISIONS

Article

601a. Application of Sunset Act [NEW].

606a. State Telecommunications Act of 1975 [NEW].

Art. 601a. Application of Sunset Act

The State Board of Control is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1987.

[Added by Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.144, eff. Aug. 29, 1977.]

¹ Article 5429k.

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 telecommunications 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 5]

Waiver of Requirements for Rentals by the Legislature

Sec. 5A. When payment for a rental or lease-purchase of supplies, materials, or equipment is to be made from the expense fund of a house of the legislature, the board may waive the requirements of this Act, in which case the rental or lease-purchase is subject to the rules and policies of the appropriate house of the legislature.

Purchases by Legislators of the Gunlocke Chair

Sec. 5B. A legislator may purchase the Gunlocke Executive Chair used by the legislator on the floor of the legislature if:

- (1) the legislator has not been reelected; and
- (2) the legislator pays into the State Treasury the State Board of Control's estimate of the fair market value of replacement equipment.

This section does not limit a legislator's right to purchase state-owned equipment in any other manner.

[See Compact Edition, Volume 3 for text of 6 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; Acts 1977, 65th Leg., p. 707, ch. 266, § 1, eff. Aug. 29, 1977.]

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.

Application of Sunset Act

Sec. 2a. The Texas Committee on Purchases of Blind-made Products and Services is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the committee is abolished, and this Act expires effective September 1, 1985.

¹ Article 5429k.

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 non-profit 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 assess-

ment 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. Amended by Acts 1977, 65th Leg., p. 1846, ch. 735, § 2.103, eff. Aug. 29, 1977.]

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 practi-

cal 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.

Application of Sunset Act

Sec. 2a. The Texas Committee on Purchases of Blind-made Products and Services is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the committee is abolished, and this Act expires effective September 1, 1985.

¹ Article 5429k.

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. Amended by Acts 1977, 65th Leg., p. 1846, ch. 735, § 2.104, eff. Aug. 29, 1977.]

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 3]

Surplus Property

Sec. 4. (a) All state agencies which determine that they have surplus property shall inform the Board of the kind, number, location, condition, original cost or value, and date of acquisition of the property. The Board may inform other state agencies of the existence, kind, number, location and condition of any surplus property. Any state agency when so informed may negotiate directly with the other agencies for an interagency transfer of the property but shall inform the Board of its interest in order that the property will not be sold or disposed of before a transfer may be made. If a transfer of surplus property is made the agencies taking part in the transfer shall mutually agree on the value of the

transferred property and shall report the value to the Comptroller. The Comptroller shall credit and debit their respective appropriations. Transfers of surplus property shall be reported to the Board but the consent of the Board shall not be required for any transfer. After surplus property is reported to the Board it shall not be sold by the reporting agency unless written authority to sell is given by the Board. The Board shall adjust the state inventory records to show the transfer if inventoried property is transferred.

[See Compact Edition, Volume 3 for text of 4(b) and (c)]

(d) All agencies for whom surplus property is sold or who sell surplus property under authorization of the Board shall report the sale together with the prices realized to the Comptroller; and if the property is on the state inventory the Board then shall be authorized to remove it from the inventory.

Salvage Property

Sec. 5.

[See Compact Edition, Volume 3 for text of 5(a) and (b)]

(c) If the Board cannot sell or dispose of any property reported to it as surplus or salvage it may order the property destroyed as worthless salvage and report the destruction to the declaring agency. All agencies for whom salvage property is sold or who sell salvage property under authorization of the Board or who destroy worthless salvage under authorization of the Board or for whom the Board has ordered destruction of property as worthless salvage shall report the items sold or destroyed and the prices realized, if any, to the Comptroller. The disposal of salvage by any of these methods shall authorize the Board to then remove reported property from the state inventory if any reported items were on the state inventory. Authorization by the Board to delete salvage items not its own from the state inventory shall not be required. It is not the intention of this subsection to alter, enlarge or amend the law providing for the deletion from inventory upon the authorization of the Auditor of property that is missing from any agency.

[See Compact Edition, Volume 3 for text of 5(d) and 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 9]

Reports and Forms; Powers to Prescribe

Sec. 10. The Board is authorized to prescribe reports and forms, and rules and regulations pertaining to such forms or reports necessary to accomplish the object of this Act subject to the approval of the State Auditor.

[See Compact Edition, Volume 3, for text of 11]

Surplus Property of Legislature

Sec. 12. The provisions of this Act do not apply to the disposition of surplus property by either house of the Legislature pursuant to a system of disposition provided for in the rules and regulations of the administration committee of each house. If surplus property of either house is sold, proceeds of the sale shall be deposited in the state treasury to the credit of the expense fund of that house.

[Amended by Acts 1975, 64th Leg., p. 934, ch. 348, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1889, ch. 751, §§ 3 to 6, eff. Nov. 1, 1977; Acts 1977, 65th Leg., p. 2141, ch. 856, § 1, eff. Aug. 29, 1977.]

Art. 666b. Lease of Space for State Agencies

Definitions

Sec. 1. In this Act:

- (1) "Board" means the State Board of Control.
- (2) "State agency" means a board, a commission, a department, an office, or other agency of the state government.

Request for Space; Determinations and Standards

Sec. 2. (a) When a state agency needs space to carry on its functions, the head of the agency or his designee shall submit a written request for the space to the board.

(b) After consulting the state agency regarding the amount and type of space requested, the board shall determine whether a need for the space exists and, if so, the specifications to be used in obtaining the space.

(c) The board shall adopt standards regarding the uses of and the needs for space by state agencies and the types of space needed by state agencies.

Consolidation of Requests

Sec. 3. The board may consolidate the requests for space of two or more state agencies with similar needs and obtain and allocate space so that it can be shared by the agencies.

Preference for State-owned Space

Sec. 4. In filling a request for space, the board shall give a preference to available state-owned space under the control of the board.

Leasing Space from Other Sources

Sec. 5. (a) When state-owned space under the control of the board is not available and a state agency has verified that it has sufficient funds available to cover a lease of space, the board may lease space for the agency from another source according to the provisions of this section.

(b) The space may be leased from another state agency through an interagency contract or from the federal government or a political subdivision, including a county, a municipality, a school district, a water or irrigation district, a hospital district, a council of government, or a regional planning council, through a negotiated contract.

(c) The space may be leased from a private source through competitive bidding whenever possible, but the board may negotiate for the space when competition is not available.

(d) When competitive bidding is used by the board, the board shall award the lease contract to the lowest and best bidder meeting the advertised specifications and on the terms agreed on by the board and the lessor.

(e) In any contract entered into by the board for the lease of space under this Act, the State of Texas, acting through the board, is the lessee.

(f) The provisions of the lease contract shall reflect the provisions contained in the invitation for bids, the successful bid, and the award of the contract.

(g) The lease contract may provide for an original term not to exceed 10 years and may include options to renew for as many terms, not to exceed 10 years each, that the board considers to be in the state's best interest, and when the contract contains no option to renew, the lease may be renewed once according to the same provisions that were in the original contract for a term not to exceed one year, on agreement of the parties.

(h) A lease contract is contingent on the availability of funds appropriated by the legislature to cover the provisions of the lease.

(i) The obligation of the lessor to provide lease space and of the board to accept the space becomes binding on the award of the contract.

Elimination of Barriers to Handicapped Persons in State Buildings

Sec. 6. The board may not enter a lease contract under this Act unless it complies with the provisions of Chapter 324, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 678g, Vernon's Texas Civil Statutes).

Remedial Action Against Lessor

Sec. 7. (a) When a state agency occupies lease space and is aware of circumstances concerning the space which require remedial action against the lessor, the agency shall notify the board, and the board may investigate the circumstances and the lessor's performance under the contract.

(b) When the board requests the assistance of the attorney general in protecting the state's interest under a lease contract, the attorney general shall assist the board.

Certification of Funds

Sec. 8. At least 60 days before the beginning of each fiscal biennium during the term of a lease contract entered into under this Act, the state agency occupying the leased space shall certify to the board that funds are available to cover the lease.

Option to Purchase

Sec. 9. When the board considers it advisable, the board may lease space for a state agency by a contract which contains an option for the board to purchase the space subject to the legislature's appropriation of funds for the purchase. A lease contract containing the option shall show the amount that will be accumulated by the board and credited toward the purchase at various periods during the term of the lease and the purchase price of the property at the beginning of each fiscal biennium during the term of the lease.

Records

Sec. 10. In order to efficiently maintain a space management system, the board shall maintain records of the amount and cost of space under lease by the board and may collect other information that it considers necessary. All state agencies shall cooperate with the board in securing this information.

Exemptions

Sec. 11. The provisions of this Act do not apply to the acquisition of district office space for members of either house of the legislature or space to be used by the Texas Employment Commission unless the house of the legislature or the commission, as the case may be, requests the board to obtain the space in accordance with this Act.

Rules and Regulations

Sec. 12. The board shall promulgate rules necessary to administer the provisions of this Act. [Amended by Acts 1977, 65th Leg., p. 1412, ch. 572, § 1, eff. June 15, 1977.]

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 driveways 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.

Sec. 7a. Repealed by Acts 1977, 65th Leg., p. 1912, ch. 763, § 1, eff. Aug. 29, 1977.

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; Acts 1977, 65th Leg., p. 1912, ch. 763, § 1, eff. Aug. 29, 1977.]

Art. 678g. Construction of Public Buildings and Facilities for Use by Handicapped Persons

[See Compact Edition, Volume 3 for text of 1]
Application of Act

Sec. 2.

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

(d) These standards and specifications shall be adhered to in certain privately financed buildings, building elements, and improved areas which are open to public use for education, employment, transportation, or acquisition of goods and services, and which are constructed on or after January 1, 1978, in counties with a population of 50,000 or more. Such facilities include the following:

(1) shopping centers which contain in excess of five separate mercantile establishments; Section 12 does not apply unless the shopping center elects to have public toilet rooms;

(2) transportation terminals;

(3) theaters and auditoriums having a seating capacity of 200 or more patrons;

(4) hospitals and related medical facilities which provide direct medical service to patients;

(5) nursing homes and convalescent centers;

(6) professional office buildings, buildings containing 20,000 or more square feet of floor space and wherein commercial activity or profession is practiced in all or the majority of such building or structure;

(7) funeral homes;

(8) commercial business and trade schools or colleges.

[See Compact Edition, Volume 3 for text of 3 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.

Responsibilities for Enforcement

Sec. 20.

[See Compact Edition, Volume 3 for text of 20(a)]

(b) The State Building Commission shall have all necessary powers to require compliance with its rules and regulations and modifications thereof and substitutions therefor, including powers to institute and prosecute proceedings in the District Court to compel such compliance, and shall not be required to pay any entry or filing fee in connection with the institution of such proceedings. The State Building Commission or a handicapped person who seeks injunctive relief to obtain compliance with the rules and regulations shall first notify a person responsible for the building and allow that person 90 days to bring the building into compliance. The State Building Commission shall have the authority to extend the 90-day period when circumstances justify such extension.

[See Compact Edition, Volume 3 for text of 20(c) to 21]

[Amended by Acts 1975, 64th Leg., p. 1950, ch. 641, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1916, ch. 767, §§ 1, 2, eff. Aug. 29, 1977.]

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 mechanical 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 FOUR A. STATE BUILDING COMMISSION

Article

678m.1. Transfer of Powers and Duties to Board of Control [NEW].

Art. 678m. Building Commission

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

Application of Sunset Act

Sec. 1a. The State Building Commission is subject to the Texas Sunset Act,¹ but it is not abolished under that Act. The commission shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1987 and of every 12th year after 1987 are reviewed.

¹ Article 5429k.

[See Compact Edition, Volume 3 for text of 2 to 24]

[Amended by Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.146, eff. Aug. 29, 1977.]

Art. 678m.1. Transfer of Powers and Duties to Board of Control

Sec. 1. (a) The statutory powers and duties of the State Building Commission are transferred to the State Board of Control. Records and property in the custody of the State Building Commission that pertain to the administration of the commission's statutory powers and duties, and personnel of the commission whose primary duties pertain to the administration of the commission's statutory powers and duties, are transferred to the State Board of Control.

(b) The state auditor shall assist the State Building Commission and State Board of Control in determining which records, property, and personnel are subject to transfer under this section. His decision is final when there is a conflict between the commission and the board about which records, property, or personnel are subject to the transfer.

Sec. 2. The State Board of Control shall project and review future building construction needs of the state government in the state and in the capitol complex area, prepare a plan for the renovation of the state capitol, and develop a new master construction plan to accommodate the building construction needs of the state government and the renovation plan for the state capitol.

[Text of section conditioned on constitutional amendment]

Sec. 3. (a) The State Building Commission is abolished. The constitutional powers and duties of the State Building Commission are transferred to the State Board of Control. Records and property in

the custody of and personnel of the State Building Commission not otherwise transferred by this Act are transferred to the State Board of Control.

(b) The State Building Fund is abolished. Unexpended and unobligated funds in the State Building Fund are transferred to a special fund in the State Treasury. The funds may be used as directed by the legislature to acquire real property in the capitol complex area, construct buildings in the capitol complex area, purchase personal property for use in the buildings, and pay necessary architectural and planning fees incurred in carrying out these purposes.

Sec. 4. Section 3 of this Act takes effect only if and when the constitutional amendment proposed by S.J.R. No. 48, 65th Legislature, Regular Session, 1977, is adopted. Sections 1 and 2 take effect on September 1, 1977.

[Acts 1977, 65th Leg., p. 1914, ch. 766, §§ 1, 2, eff. Sept. 1, 1977; § 3 eff. upon adoption of S.J.R. No. 48.]

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 statewide 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 consulta-

tion 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 effective 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 inten-

tion 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

Article

695m. Pilot Multipurpose Service Centers for Displaced Homemakers [NEW].

695n. Employment Incentive Act [NEW].

695o. AFDC Education and Employment Act [NEW].

Art. 695c. Public Welfare Act of 1941

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

State Department of Public Welfare

Sec. 2. (1) There is hereby created a State Department of Public Welfare which shall consist of a State Board of Public Welfare, a Commissioner, and such other officers and employees as may be required to efficiently carry out the purposes of this Act. The State Board of Public Welfare shall be composed of three (3) members representing all geographic regions of the state, to be appointed by the Governor of the State of Texas with the advice and consent of the Senate on the basis of demonstrated interest in, and knowledge of, public welfare and who have had experience as an executive or administrator; the term of one member to expire January 20, 1979, the term of one member to expire January 20, 1981, and the term of one member to expire January 20, 1983; provided, however, that the present members of the State Board of Public Welfare who have previously been appointed by the Governor and confirmed by the Senate shall continue to hold office for the terms to which they have been appointed. The Governor shall designate which appointee he desires to fill each term and vacancies shall be filled for any unexpired term by appointment by the Governor with the advice and consent of the Senate. On January 20, 1979, and biennially thereafter, one member of said Board shall be appointed for a full term of six (6) years, and each member of said Board shall hold office until his successor has been appointed and has qualified by taking the oath of office. The State Board of Public Welfare shall have its office in Austin, Texas, in such building as shall be designated and approved by the State Board of Control.

(2) At the first meeting of the members of said Board, after their appointment and biennially thereafter upon the appointment of a new member thereof, one of the members thereof shall be elected Chairman to preside over all meetings of such Board,

and two (2) members thereof shall constitute a quorum for the transaction of business.

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

(4) The State Department of Public Welfare is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the department is abolished, and this Act expires effective September 1, 1985.

¹ Article 5429k.

Name Changes

Sec. 2-A. The name of the State Board of Public Welfare is changed to the Texas Board of Human Resources, the name of the State Department of Public Welfare is changed to the Texas Department of Human Resources, and the name of the Commissioner of Public Welfare is changed to the Commissioner of Human Resources. Any reference in the statutes to the State Board of Public Welfare means the Texas Board of Human Resources, any reference to the State Department of Public Welfare means the Texas Department of Human Resources, and any reference to the Commissioner of Public Welfare means the Commissioner of Human Resources.

[See Compact Edition, Volume 3 for text of 3 to 7-A]

Unauthorized Use, Alteration, Transfer, Redemption, or Possession of Food Stamps; Penalty

Sec. 7-B. (a) A person commits an offense if he knowingly uses, alters, or transfers food stamp coupons or authorizations to purchase food stamp coupons in any manner not authorized by law. An offense under this subsection is a Class A misdemeanor if the value of the coupons or authorization cards is less than \$200 and a felony of the third degree if the value of the coupons or authorization cards is \$200 or more.

(b) A person commits an offense if he knowingly possesses food stamp coupons or authorizations to purchase food stamp coupons when he is not authorized by law to possess them, if he knowingly redeems food stamp coupons when he is not authorized by law to redeem them, or if he knowingly redeems food stamp coupons for purposes not authorized by law. An offense under this subsection is a Class A misdemeanor if the value of the coupons or autho-

rization cards is less than \$200 and a felony of the third degree if the value of the coupons or cards is \$200 or more.

(c) A person commits an offense if he knowingly possesses blank authorizations to purchase food stamp coupons when he is not authorized by law to possess them. An offense under this subsection is a felony of the third degree.

(d) When food stamp coupons or authorizations to purchase food stamp coupons of various values are obtained in violation of this section pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the values aggregated in determining the grade of the offense.

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. Repealed by Acts 1977, 65th Leg., p. 81, ch. 38, § 2, eff. March 30, 1977.

Repeal

Section 8(a) of this article is also repealed by Acts 1975, 64th Leg., p. 2250, ch. 708, § 26, effective January 1, 1976, without reference to amendment by Acts 1975, 64th Leg., chs. 476, § 56 and 502, §§ 1 to 3. 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 under rules and regulations developed by the State Department of Public Welfare.

[See Compact Edition, Volume 3 for text of 19 and 19-A]

Application of Employment Incentive Act

Sec. 19-B. (a) A person who is required to register with the Texas Employment Commission under the Employment Incentive Act¹ is not eligible to receive AFDC (aid to families with dependent children) payments until he is registered.

(b) Before making a payment, the department shall determine whether the person to whom the payment is to be made is required to register with the Texas Employment Commission under the Employment Incentive Act and, if the person is required to register, whether he is registered. If the department finds that a person who is required to register is not registered, the department may not make the payment.

(c) On receipt of notice from the Texas Employment Commission that a person has failed to comply with the Employment Incentive Act, the department shall immediately terminate the person's AFDC (aid to families with dependent children) payments.

(d) The department shall maintain a current record of all persons found to be ineligible to receive AFDC (aid to families with dependent children) payments under the Employment Incentive Act. The department shall distribute the record to each divi-

sion within the department in which the record is or may be relevant in determining eligibility for any welfare benefits.

(e) The department shall arrange placement of the dependent children of an ineligible person with another person or with an institution if the department determines that alternative care is in the best interest of the children.

¹ Article 695n.

[See Compact Edition, Volume 3 for text of 20 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.

Penalty for Violation of Sections 32 or 33

Sec. 34. (a) Whoever violates Section 32 or Section 33 of this Act commits an offense.

(b) An offense under this section is a Class A misdemeanor.

[See Compact Edition, Volume 3 for text of 35 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; Acts 1977, 65th Leg., p. 81, ch. 38, § 2, eff. March 30, 1977; Acts 1977, 65th Leg., p. 188, ch. 94, § 1, eff. May 3, 1977; Acts 1977, 65th Leg., p. 637, ch. 235, § 1, eff. May 25, 1977; Acts 1977, 65th Leg., p. 751, ch. 281, § 11, eff. Mar. 1, 1978; Acts 1977, 65th Leg., p. 1371, ch. 543, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1847, ch. 735, § 2.109, eff. Aug. 29, 1977.]

Nursing home care program reports: Acts 1977, 65th Leg., p. 743, ch. 277, provided:

"The State Department of Public Welfare or its successor agency responsible for alternate care programs shall, before January 1, 1979, report to the legislature on the alternate care program. The reporting panel shall be made up of three persons from the State Department of Public Welfare appointed by the board of directors of the State Department of Public Welfare, three members of the house of representatives to be appointed by the speaker of the house, and three members of the senate to be appointed by the lieutenant governor. The report must include a complete evaluation of the effectiveness of the program and its effect on the number of persons receiving and the quality of care given under nursing home care programs. The report must also contain recommendations relating to whether or not alternate care is a suitable substitute for some kinds of nursing home care and whether there is a continuing need for minimum level nursing care programs, such as Intermediate Care Facility II programs."

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]

Contributions by State Agency from Social Security Trust Fund

Sec. 4. The State Agency is authorized to pay contributions as required by these agreements from the Social Security Trust Fund established by Chapter 500, Acts of the 52nd Legislature, Regular Session, 1951, as amended (Article 695g, Vernon's Texas Civil Statutes). All laws and parts of laws which fix a maximum compensation for any covered employees of the State are hereby amended to allow payment, in addition to any maximum compensation otherwise fixed by law, of all contributions necessary to this program except for such portion as is payable by State employees.

Contributions by State Employees

Sec. 5. In consideration of State employees' retention in or entry upon employment, there is imposed upon said employees as to services which are covered by an agreement with the Secretary of Health, Education and Welfare a contribution with respect to wages (as defined in section 1(a) of this Act) equal to the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act¹ if such services constituted employment within the meaning of that Act. On behalf of each State officer or employee other than State-paid judges, the State will pay these contributions in a percentage not to exceed 5.85 percent of wages, such wages not to exceed \$16,500 in any calendar year. Any excess employee contributions shall be paid by the employee. Such contributions shall be paid to the Social Security Trust Fund from the respective funds from which covered employees receive their compensation.

¹ 26 U.S.C.A § 3101 et seq.

Collection of Contributions

Sec. 6.

[See Compact Edition, Volume 3 for text of 6(a)]

(b) The collection of the State's contribution shall be made as follows:

(1) After September 1, 1978, and after the date of the establishment of Social Security coverage for State employees, there is hereby allocated and appropriated to the Social Security Trust Fund, in accordance with this Act, from the several funds from which the employees benefited by this Act receive their respective salaries, a sum equal to the amount of the contribution to be paid by the State as provided in Sections 4 and 5 of this Act for employees whose compensation is paid from funds in the State Treasury. The State Agency shall certify to the State Comptroller of Public Accounts at the end of each month the total amount of the State's monthly contributions for employees whose salaries are paid from funds in the State Treasury. The State Comptroller after receipt of the certification shall pay the amount to the State Treasurer as custodian of the Social Security Trust Fund. The State Treasurer shall deposit the amounts so received in the Social Security Trust Fund.

(2) Thereafter, on or before the first day of November next preceding each Regular Session of the Legislature, the State Agency shall certify to the Governor for review and adoption the amount necessary to pay the contributions of the State of Texas for the ensuing biennium. This amount shall be included in the budget of the State which the Governor submits to the Legislature. The State Agency shall send a copy to the State Comptroller of Public Accounts of the certification to the Governor.

(3) All moneys hereby allocated and appropriated by the State to the Social Security Trust Fund shall be paid to the Fund in monthly installments.

(4) In those instances in which State employees are paid from funds not in the State Treasury, the department head at the end of each month shall certify to the proper disbursing officer the total amount of the State's contributions based upon compensation paid the employees. The disbursing officer shall pay that amount to the State Treasurer as custodian of the Social Security Trust Fund. The State Treasurer shall deposit the amounts in the Social Security Trust Fund. A copy of the department heads' certification in these instances shall be given to the State Agency at the same time the original is certified to the disbursing officer. These copies shall be on forms prescribed by the State Agency.

[See Compact Edition, Volume 3 for text of 7 to 11]

[Amended by Acts 1975, 64th Leg., p. 965, ch. 366, § 1(b), eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 907, ch. 341, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 695j-1. Medical Assistance Act of 1967

[See Compact Edition, Volume 3 for text of 1 to 9]

Hearings for Contract Providers

Sec. 9-A. Any person, association, or corporation contracting with the State Department of Public Welfare to provide medical assistance under this Act may request a hearing upon receipt of notice from the Department of the intended cancellation of the contract by the Department. The Department shall promulgate rules and regulations to provide for reasonable notice to such contractors of its decision to cancel a contract and to allow the contractors an opportunity for a hearing. Said rules and regulations shall be consistent with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and the hearing shall be held under the contested case provisions thereof including those for judicial review. If hearing is requested by a contractor under this section and in accordance with the Department rules and regulations, the contract shall not be terminated until after the hearing has been held. Payment may be withheld pending the hearing, but payment must be reinstated retroactively to the date of withholding if the final determination is favorable to the contractor or by action of the Department. This section is not applicable when a contract is cancelled because federal matching funds for continuing contract payments are no longer available or when a contract expires according to its own terms.

[See Compact Edition, Volume 3 for text of 10 and 11]

Rules and Regulations to Minimize Fraud; Penalty for Violation of Section 10

Sec. 12. The State Department shall adopt reasonable rules and regulations for minimizing the opportunity for fraud; for establishing and maintaining methods of detecting and identifying situations in which a question of fraud in the program may exist; and for referring cases where fraud appears to exist to the appropriate law enforcement agencies for prosecution.

Whoever violates Section 10 of this Act shall be deemed guilty of a Class A misdemeanor.

[See Compact Edition, Volume 3 for text of 13 to 15]

Nursing Home and Training Center

Sec. 15A. The State Department of Public Welfare is authorized to accept one geriatric center in

the city of Austin from the federal government to be operated as a nursing home and a training facility and used in administering programs of the department. The state department may charge reasonable fees for providing nursing home care; provided that fees charged persons receiving medical assistance under The Medical Assistance Act of 1967 do not exceed the amounts paid on their behalf under that Act. Any fees collected by the state department under this section shall be deposited in a special fund in the State Treasury or in accounts in financial institutions and may be used by the state department to operate the nursing home. The state department may use funds appropriated for nursing home care under its medical services programs for the maintenance and improvement of the property acquired under this section and for the operation of the nursing home.

[See Compact Edition, Volume 3 for text of 16 to 23]

[Amended by Acts 1977, 65th Leg., p. 325, ch. 156, § 1, eff. May 13, 1977; Acts 1977, 65th Leg., p. 641, ch. 238, § 1, eff. May 25, 1977; Acts 1977, 65th Leg., p. 1139, ch. 430, § 1, eff. Aug. 29, 1977.]

Art. 695k. Texas State Committee on Aging

Governor's Committee on Aging; Terms of Office; Compensation; Policies, Rules and Regulations; Meetings; Application of Sunset Act

Sec. 1.

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

(f) The Governor's Committee on Aging is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the committee is abolished, and this Act expires effective September 1, 1985.

¹ Article 5429k.

[See Compact Edition, Volume 3 for text of 2 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 workmen'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) and 6]

State Financial Assistance to Recruit Retired Persons to Perform Voluntary Community Service

Sec. 6a. (a) The committee shall disburse state money, to the extent provided by legislative appropriation, to local public agencies or private, nonprofit corporations that operate programs to recruit retired persons to perform volunteer community services.

(b) A public agency or nonprofit corporation may not receive state money under this section if it is not entitled to receive federal matching money for the same purpose. The committee by rule shall establish guidelines or formulas to determine the proportion of state money distributed to each public agency or nonprofit corporation. The committee by rule may establish additional criteria for qualification to receive the state money.

(c) State money disbursed under this section may not be used to pay compensation to volunteer workers or for purposes other than financing the operation or administration of the volunteer programs, but it may be used to defray expenses incurred by volunteers in the performance of volunteer work. The committee by rule may further limit the purposes for which the state money may be spent.

[See Compact Edition, Volume 3 for text of 7]

[Amended by Acts 1975, 64th Leg., p. 1817, ch. 553, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 307, ch. 141, § 1, eff. May 13, 1977; Acts 1977, 65th Leg., p. 1846, ch. 735, § 2.101, eff. Aug. 29, 1977.]

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.]

Art. 695m. Pilot Multipurpose Service Centers for Displaced Homemakers

[Text of article effective until August 31, 1981]

Findings and Purpose

Sec. 1. (a) The legislature finds and declares that there is an increasing number of persons in this state who, having fulfilled a role as homemaker, find themselves "displaced" in their middle years through divorce, death of spouse, or other loss of family income. As a consequence, displaced homemakers are very often left with little or no income; they are ineligible for categorical welfare assistance; they

are subject to the highest rate of unemployment of any sector of the work force; they face continuing discrimination in employment because of their age and lack of recent paid work experience; they are ineligible for unemployment insurance because they have been engaged in unpaid labor in the home; they are ineligible for social security benefits because they are too young, and many never qualify because they have been divorced from the family wage earner; they may have lost beneficiaries' rights under employers' pension and health plans through divorce or death of spouse; and they are often unacceptable to private health insurance plans because of their age. Homemakers are an unrecognized part of the work force who make an invaluable contribution to the strength, durability, and purpose of our state.

(b) It is the intention of the legislature in enacting this legislation to provide the counseling, training, and service programs for displaced homemakers necessary to promote the health and welfare of this growing group of citizens and to enable them to enjoy independence and economic security.

Definitions

Sec. 2. In this Act:

(1) "Displaced homemaker" is an individual who:

(A) is 40 years of age or older and has worked without pay as a homemaker for his or her family;

(B) is not gainfully employed on a full-time basis or has had, or would have, difficulty in finding adequate employment; and

(C) has depended for support on the income of a family member and has lost that income or has depended on and received income support primarily from another source while working as a homemaker or parent and has lost that support.

(2) "Department" means the Texas Rehabilitation Commission.

(3) "Commissioner" means the Commissioner of the Texas Rehabilitation Commission.

Establishment of Centers

Sec. 3. (a) The commissioner shall establish two multipurpose service centers for displaced homemakers, one which shall be in a reasonably central location within the largest federal Standard Metropolitan Statistical Area, as determined by the U.S. Bureau of the Census, in the state. The second pilot service center shall be established in a county with a population of 100,000 or less.

(b) The commissioner shall contract with a nonprofit organization or a unit of local government, or both, to operate each center. Payment for the oper-

tion of each center for the first month shall be made in advance, but payments for subsequent months of operation shall be made on a billing basis under the terms of the contract. To the greatest extent possible, the staff of each service center, including supervisory, technical, and administrative personnel, shall be filled by displaced homemakers. If necessary, the center may provide for on-the-job training of potential staff members by independent contractors or volunteer agencies.

Job-Counseling Program

Sec. 4. Each multipurpose service center shall provide a job-counseling program for displaced homemakers. Job counseling shall be specifically designed for the person entering the job market after a number of years as a homemaker. Counseling shall take into account and build upon the skills and experiences of a homemaker and shall emphasize job readiness as well as skill development.

Job-Training Program

Sec. 5. Each multipurpose service center shall provide a job-training program for displaced homemakers. The job-training program shall utilize existing skills and be directed toward meeting community needs and creating new jobs, as well as filling available positions, in both public and private employment. Each center shall work with agencies of local government, nonprofit organizations, and private employers in developing job-training cooperative agreements for various vocations. Each center shall provide stipends for job trainees within the limits of available funds. The Texas Employment Commission shall assist each center in finding permanent employment for persons who have completed the job-training program conducted through each center.

Service Programs

Sec. 6. (a) Each multipurpose service center shall operate a health information service to disseminate information about preventive health care and nutrition. The service shall emphasize the health problems, including menopause, of older persons. The clinic service shall provide information, which may include lectures, discussions, and informal courses, on alcohol and drug addiction and the causes of addiction in older persons. The service may, with the assistance of a county medical society or hospital staff, establish a referral service to direct displaced homemakers to physicians.

(b) Each service center shall provide information, which may include lectures, discussions, and informal courses, on money management, specifically including information about insurance, taxes, mortgages, loans and probate problems.

(c) Each service center may establish additional service programs designed to prepare the displaced

homemaker to be a wage earner, to manage his or her own affairs, or to enable the displaced homemaker to provide for his or her physical or mental well-being and security.

Funding Sources

Sec. 7. In addition to legislative appropriation, the department shall explore all possible legal sources of funding for the pilot multipurpose service centers. The department may accept gifts, grants, and in-kind contributions from federal, local, and private sources and may use federal funds under Title 20, Social Security Act, 42 U.S.C. Section 1397 et seq. (1975), if they become available. The department shall seek contributions of building space, equipment, and services.

Fees and Regulations

Sec. 8. The local director of each service center may establish a schedule of fees, based on ability to pay, for various counseling and service programs offered by the center. Fees shall be designed to help defray the costs of operation of the centers. Each local director may also establish guidelines for participation in the job-training program, taking into account the degree of need of the displaced homemaker, the extent of existing agreements with training employers, and the limits of available funds. Each local director shall establish a schedule of stipends, based on need and the extent of any compensation by the training employer, for job trainees.

Reports

Sec. 9. The department is responsible for monitoring the operation of each service center four times each year. The local director of each service center shall prepare an annual report to the department, accounting for all funds provided the centers and describing in detail the services performed at and through the center during the preceding 12-month period and shall make records of the operation of the centers available to the commissioner at his request. The department shall prepare an annual evaluation of the performance of each center in meeting the needs of displaced homemakers in the area. The evaluation shall consider the effectiveness of the programs offered by each center in terms of number of persons served, quality of services rendered, number of job placements, and degree of need for continuance of similar programs.

Expiration Date

Sec. 10. This Act expires on August 31, 1981. [Acts 1977, 65th Leg., p. 280, ch. 135, eff. May 11, 1977.]

Art. 695n. Employment Incentive Act

Short Title

Sec. 1. This Act may be cited as the Employment Incentive Act.

Definitions

Sec. 2. In this Act:

(1) "AFDC" means aid to families with dependent children authorized by The Public Welfare Act of 1941.¹

(2) "AFDC recipient" means a person who receives or who the State Department of Public Welfare has determined is eligible to receive AFDC payments.

¹ Article 695c.

Employment Program

Sec. 3. The Texas Employment Commission, after consultation with the State Department of Public Welfare, shall establish an employment program designed to assist and encourage AFDC recipients in obtaining employment. The commission shall adopt the rules necessary to implement the employment program consistent with this Act and applicable federal law.

Registration

Sec. 4. (a) Except as provided in Subsection (b) of this section, each AFDC recipient shall register with the commission in the employment program established under Section 3 of this Act.

(b) An AFDC recipient is not required to register if he is in the class of individuals that is exempt from registering for manpower services, training, and employment under Section 402, Title IV-A of the federal Social Security Act (42 U.S.C. Section 602) and rules adopted pursuant to that law.

Duty of Registrant

Sec. 5. Each registrant shall:

(1) report to the commission for interview at the reasonable request of the commission;

(2) furnish the commission with information it requests that is reasonably related to placing the registrant in suitable employment;

(3) apply for suitable employment as directed by the commission;

(4) accept any offer of suitable employment; and

(5) continue in suitable employment obtained after registration until:

(A) the work becomes unsuitable;

(B) he becomes exempt from the registration requirement as provided in Section 4 of this Act; or

(C) he is terminated from the employment due to circumstances beyond his control.

Review of Registrants; Notification of Welfare Department

Sec. 6. (a) The commission shall establish a system of periodic review to determine whether registrants comply with Section 5 of this Act. In each case reviewed, the commission shall determine whether the registrant without good cause failed to comply. Before making its decision, the commission shall give the registrant an opportunity for an adjudicative hearing.

(b) In determining suitability of employment, the commission shall consider the facts and circumstances relative to the particular registrant, including but not limited to his health, his training and education, the degree of risk to his health and safety, his experience and prior earnings, his prospects of securing work in his customary occupation, and the commuting distance and expense.

(c) Employment is not suitable if the commission determines that:

(1) the compensation, work hours, or other conditions of work are substantially less favorable to the registrant than those prevailing for similar work in the locality;

(2) as a condition of employment the registrant is required to join, resign from, or refrain from joining a labor organization;

(3) the work site is subject to a strike or lockout at the time of the offer of employment;

(4) the degree of risk to the registrant's health or safety is unreasonable;

(5) the registrant is physically or mentally unfit to perform the work;

(6) the commuting distance is unreasonable; or

(7) the employment fails to satisfy standards established under applicable federal law.

(d) If the final decision of the commission is that a registrant failed to comply with Section 5 of this Act without good cause, the commission promptly shall give the Commissioner of Public Welfare written notice of the decision. However, if the registrant appeals the decision, the commission shall delay notification pending the final outcome of the appeal.

Loss of AFDC Eligibility; Reinstatement

Sec. 7. (a) If a registrant has failed to comply with Section 5 of this Act without good cause as determined by the commission, the registrant is ineligible to receive AFDC payments. The ineligibility takes effect on the date the commission's decision on the matter becomes final.

(b) AFDC ineligibility resulting from the application of Subsection (a) of this section continues until

the registrant's eligibility is reinstated by the commission.

(c) On application by a registrant for reinstatement of AFDC eligibility in the manner prescribed by rule of the commission, the commission shall determine whether to reinstate eligibility.

(d) The commission shall reinstate AFDC eligibility if it finds that the registrant, after having lost eligibility under Subsection (a) of this section, obtained employment of at least 30 hours a week. Before making its decision, the commission shall give the registrant an opportunity for an adjudicative hearing.

(e) On reinstatement of a registrant's AFDC eligibility, the commission shall give the Commissioner of Public Welfare written notice of the reinstatement.

Deduction for Unsuccessful Appeal

Sec. 8. (a) If the final outcome of a registrant's appeal of a decision made by the commission under Section 6 of this Act upholds the commission's decision, the department of public welfare shall deduct the amount of AFDC payments made to the registrant during the pendency of the appeal from any future AFDC payments made to the registrant.

(b) In each case in which a deduction is required under Subsection (a) of this section, the commission shall give the Commissioner of Public Welfare written notice of the time elapsed between the rendering of the commission's decision and the reviewing court's judgment.

Hearings

Sec. 9. The commission, a hearing examiner appointed by the commission, or an appeal tribunal established under the Texas Unemployment Compensation Act (Article 5221b-22b, Vernon's Texas Civil Statutes) may conduct an adjudicative hearing held under this Act.

Venue of Appeal

Sec. 10. Venue in an appeal of a decision made by the commission under this Act is in the district court of the county in which the registrant resides.

Sec. 11. [Adds § 19-B to art. 695c]

Delayed Effective Date

Sec. 12. Sections 5 through 11 of this Act take effect March 1, 1978. Otherwise, this Act takes effect September 1, 1977.

Sunset Provision

Sec. 13. Unless reenacted, the provisions of this Act shall be without effect after August 31, 1987.

[Acts 1977, 65th Leg., p. 749, ch. 281, §§ 1 to 4, 12, 13, eff. Sept. 1, 1977; §§ 5 to 11, eff. March 1, 1978.]

Art. 695o. AFDC Education and Employment Act [Text of article effective until August 31, 1983]

Short Title

Sec. 1. This Act may be cited as the AFDC Education and Employment Act.

Findings and Purposes

Sec. 2. The legislature finds and declares as follows:

(1) There are more than 90,000 households receiving assistance through the AFDC program. More than 9 of the 10 (96%) AFDC households are headed by women. The State of Texas spends more than substantial funds in providing approximately \$3,600 annually in assistance and services, which include: financial grants, food stamps, day care, medical services, and administrative overhead. Past efforts directed at assisting AFDC heads of families to be economically self-sufficient have had limited effect in reducing the welfare rolls.

(2) AFDC caretakers have many handicaps when entering the job market. Lacking marketable skills, they are relegated to low-paying jobs. Thus, there is often an economic disincentive to go to work. The vast majority of AFDC caretakers are unable to earn enough income to offset child-care and transportation expenses. Because of sexual and racial discrimination, job availability is limited to a narrow range of career choices, many of which do not offer as much as the federally established minimum wage. A majority of AFDC caretakers have not attained an adequate education. Chances of effective employment are reduced.

(3) A viable solution is a Texas AFDC Employment and Education Pilot Project established by this Act. This pilot project will provide the necessary experience and basis to give new direction to Texas and national AFDC welfare policies. It is the intention of this legislation to provide assistance to AFDC recipients in obtaining employment experience and skills training from postsecondary vocational training institutions, community colleges, universities, C.E.T.A. (the federal Comprehensive Employment and Training Act), skills centers, industry, on-the-job training, and other related employment, education, and social service agencies.

AFDC Education and Employment Pilot Project

Sec. 3. (a) The AFDC Education and Employment Pilot Project is established. The pilot project

is administered by the State Department of Public Welfare, and the department shall adopt the rules necessary for its implementation consistent with this Act.

(b) The purpose of the pilot project is to develop an effective means of assisting and encouraging persons who are receiving AFDC assistance to become self-sufficient members of society by providing them with vocational and general educational opportunities and with assistance in obtaining and retaining employment. In this Act, "AFDC" means aid to families with dependent children authorized under The Public Welfare Act of 1941, as amended (Article 695c, Vernon's Texas Civil Statutes).

(c) The pilot project is financed with state money, to the extent provided by legislative appropriation, and with any federal money obtained for the purpose. The department may also accept private grants and donations for the pilot project.

(d) To qualify for participation in the pilot project, a person must be eligible to receive AFDC assistance from the department.

Education Component

Sec. 4. (a) As a component of the pilot project, the department shall develop an education program designed to provide occupational and general education for persons participating in the pilot project, using, to the extent practicable, community colleges, colleges, universities, and other educational institutions in this state that elect to participate in the education program. Participation of an educational institution in the education program is subject to the approval of the department. The department shall consult with participating educational institutions in developing curricula for the education program.

(b) The department may reimburse participating educational institutions for all or any part of the costs of providing educational services under the program established by this section.

(c) In developing the education program, the department shall emphasize training in skills or trades that offer the opportunity for earning power in excess of the federal minimum wage, as illustrated by, but not limited to, welding, carpentry, electronics, data processing, paraprofessional work, and machinist trades.

Employment Component

Sec. 5. (a) As a component of the pilot project, the department, after consultation with the Texas Employment Commission, shall develop an employment program designed to assist persons participating in the pilot project in obtaining and retaining employment and to provide them with on-the-job training.

(b) The department shall establish a number of pilot sites in both rural and urban areas of the state to administer the program on a local level. The department may contract with private nonprofit corporations to administer the site offices.

(c) The site offices may contract with employers, prospective employers, or labor unions to provide on-the-job training or apprenticeships for project participants. In placing project participants in positions in which they receive on-the-job training, the site offices shall emphasize training in the kind of skills and trades specified in Section 4(c) of this Act.

(d) The site offices may contract or enter into cooperative agreements with other publicly financed employment programs to provide job-placement services.

(e) In staffing the site offices, the department or nonprofit corporation shall employ, to the greatest extent practicable, persons who are eligible to receive AFDC assistance from the department and who have the knowledge and experience required for the positions.

(f) Each site office shall attempt to place each participant in employment commensurate with his ability, training, and experience.

Welfare Services Continued

Sec. 6. Within any limitations imposed under federal law, child care, health services, transportation, and other welfare services to which a person was entitled at the time he became a participant in the pilot project are continued after he obtains employment for the period of time and to the extent the department determines necessary to allow the person to adjust to the demands of a self-sufficient life. The department by rule shall establish standards for determining when and to what extent the services are discontinued.

Advisory Committee

Sec. 7. (a) The Commissioner of Public Welfare, with approval of the State Board of Public Welfare, shall appoint eight persons to serve as members of an advisory committee for the pilot project. Vacancies on the advisory committee are filled in the same manner.

(b) In making the appointments to the advisory committee, the commissioner shall give consideration to the ethnic and sexual makeup of the state in an effort to achieve fair representation and shall attempt to appoint at least one person from business, labor, local government, and the general public.

(c) Advisory committee members serve for the duration of the pilot project and receive no compensation.

(d) The advisory committee shall elect a chairman from among its members. The commissioner shall designate one member to serve as chairman until the committee elects a chairman. The committee meets at the call of the chairman at the place specified in the call.

(e) Each member of the advisory committee is entitled to reimbursement for actual and necessary traveling and lodging expenses incurred in attending meetings of the committee.

(f) The advisory committee shall monitor and evaluate the pilot project and report to the department in the manner prescribed by department rule.

The committee may include recommendations in its report.

(g) The department shall provide technical and administrative assistance to the advisory committee.

Annual Report

Sec. 8. The department shall prepare an annual report evaluating the pilot project.

Expiration

Sec. 9. This Act expires August 31, 1983.
[Acts 1977, 65th Leg., p. 1659, ch. 655, eff. Aug. 29, 1977.]

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. 704. Time of Election; Notice of Election

The time and place or places of holding said election shall be designated in the election order, and such election shall be held not less than fifteen (15) nor more than ninety (90) days from the date of such order. Notice of said election shall be given by posting a substantial copy of the election order in each of the election precincts of such county, city, or town, and also at the county courthouse if for a county election and at the city hall if for a city or town election. Such notice shall also be published on the same day in each of two (2) successive weeks in a newspaper of general circulation published within said county, city, or town, the date of the first publication to be not less than fourteen (14) days prior to the date set for said election. The provisions of this Article shall control over any city charter provisions to the contrary. Except as herein provided, the manner of holding said election shall be governed by the laws governing general elections. [Amended by Acts 1977, 65th Leg., p. 1395, ch. 561, § 1, eff. Aug. 29, 1977.]

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 coupons 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-2. Public Securities; Issuance by Public Agencies; Interest Rate

Sec. 1. As used in this Act, unless the context otherwise requires:

(a) The term "public agency" shall mean and include the State of Texas, any department, board, agency, or instrumentality of the State of Texas, any municipal corporation, any political subdivision, any district, and any body politic and corporate of the State of Texas.

(b) The term "public securities" shall mean any bonds, notes, or other obligations payable from taxes, or revenues, or both, which any public agency is now or hereafter may be authorized to issue pursuant to provisions of law other than this Act.

(c) The term "net interest cost" with reference to an issue or series of public securities shall mean the total of all interest to accrue and come due thereon through the final scheduled maturity date thereof, plus any discount or minus any premium included in the price paid therefor. The term "discount" with reference to an issue or series of public securities shall mean the principal amount (par value) of such issue or series plus any accrued interest to the date of delivery minus the total sum of money paid to the issuer. The term "premium" with reference to an issue or series of public securities shall mean the total sum of money paid to the issuer for such an issue or series minus the principal amount (par value) thereof, and also minus any accrued interest to the date of delivery. The term "bond years" with reference to each separate bond, note, or other obligation constituting part of an issue or series of public securities shall mean the figure obtained by dividing the principal amount (par value) of each such bond, note, or other obligation by one-thousand (1000) and multiplying such quotient by the number of years from the date interest commences to accrue thereon to its scheduled maturity date. If any portion of an issue or series of public securities is subject to a mandatory redemption prior to scheduled maturity which at the time of delivery of such public securities is scheduled to occur on a date or dates certain, net interest cost and bond years shall be calculated as if the face amount of bonds, notes, or other obligations required to be redeemed on each such earlier date were scheduled to mature on such earlier date and net interest required to be paid on any such mandatory redemption date.

(d) The term "net effective interest rate" with reference to an issue or series of public securities shall mean the figure obtained by dividing the amount of the net interest cost of such issue or series by the aggregate total number of bond years of all bonds, notes, or other obligations constituting such issue or series, and then dividing such quotient by ten (10) and expressing the result as a rate of interest in per cent per annum.

Sec. 2. The maximum rate of interest for any issue or series of public securities shall be a net effective interest rate of ten per cent (10%), and any public agency is hereby authorized to issue and sell any issue or series of its public securities at any price or prices and bearing interest at any rate or rates (provided that the net effective interest rate does not exceed ten per cent (10%)), as shall be determined within the discretion of the governing body of the public agency, subject to the exceptions hereinafter provided. Any public securities heretofore authorized by an election may be issued, sold, and bear interest as provided in this Act, except that public securities heretofore authorized by an election required by the Constitution of Texas shall not be issued at an interest rate greater than authorized at such election unless a further election is held resulting favorably to the issuance of such previously voted public securities at a price and at a rate authorized by this Act. Elections for that purpose shall be called and held, and notice thereof given, in the same manner as provided by law applicable to the previous election authorizing such public securities.

Sec. 3. The provisions of this Act concerning sale price and the maximum rates of interest which public securities may bear shall apply to all public securities notwithstanding the provisions or restrictions of any general or special law or charter to the contrary, but shall not apply to any public securities whose maximum rate of interest or maximum net effective interest rate is, at the time of issuance thereof, otherwise specifically fixed by the Constitution.

Sec. 4. If an issue or series of public securities is issued in exchange for property, labor, services, materials, or equipment pursuant to provisions of law other than this Act, such public securities may bear interest at any rate or rates, as shall be determined within the discretion of the governing body of the public agency, subject to the exceptions hereinafter provided, provided that the maximum interest rate shall not exceed ten per cent (10%).

[Amended by Acts 1977, 65th Leg., p. 1951, ch. 776, § 1, eff. Aug. 29, 1977.]

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 adopted 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 unmatured 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.

nance 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 3.07]

CHAPTER FOUR. CORPORATE POWERS OF ASSOCIATIONS

[See Compact Edition, Volume 3 for text of 4.01 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 7.05]

CHAPTER EIGHT. SUPERVISION AND REGULATION, BOOKS AND RECORDS, ACCOUNTING PRACTICES, STATEMENTS, REPORTS, AUDITS, EXAMINATIONS, VIOLATIONS, RECEIVERSHIP

[See Compact Edition, Volume 3 for text of 8.01 to 8.12]

Commissioner Shall Order Discontinuance of Violations

Sec. 8.13. If the Commissioner as a result of any examination or investigation of the affairs of an association finds that such association is violating or has violated or is about to violate any provision of its charter or bylaws or any law, or willfully violates any rule or regulation governing its operations to an extent which would tend to cause a substantial reduction in net worth or is engaging in, or has engaged in, or if the Commissioner has reasonable cause to believe that the association is about to engage in an unsafe and unsound practice or practices, he shall deliver a formal written order to the board of directors of the association in which the facts known to the Commissioner are set forth with an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the association, its directors, officers, employees, or agents to

take affirmative action to correct the conditions resulting from any such violation or practice. Such order shall become final 10 days after the same has been delivered unless the association shall within such time request a hearing before the Commissioner in regard to such order, at which hearing any pertinent evidence relating to said order or the facts stated therein may be presented. Such hearing shall be promptly held, and the Commissioner, on the basis of the evidence presented and any matters of record in his office, shall thereupon either continue such order in effect, modify the same, or set it aside. An unsafe and unsound practice with respect to an association is such action or inaction as is likely to cause insolvency or substantial dissipation of assets or earnings or to otherwise prejudice its ability to timely satisfy withdrawal requests of savings account holders.

Commissioner May Remove Directors and Officers Participating in Violations

Sec. 8.14. Whenever in the opinion of the Commissioner, any director or officer of an association has committed any violation of law, rule, or regulation, or refused to comply with a cease and desist order which has become final, or has engaged or participated in any unsafe or unsound practice or practices in connection with the association, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and it appears that the association has suffered or probably will suffer substantial financial loss or other damage or that its ability to timely satisfy withdrawal requests of savings account holders could be seriously prejudiced thereby, the Commissioner may require that any such director or officer be removed from the office. Prior to entering an order of removal, the Commissioner shall deliver a full statement of the acts and conduct to which he objects to the board of directors of the association and the person or persons concerned and of his intention to enter a removal order. Such order shall become final within 10 days after such delivery unless within such time a hearing is requested. The Commissioner shall promptly hold a hearing if timely request is made at which any pertinent evidence relating to the matters set forth in such statement may be presented. After such hearing the Commissioner, on the basis of the evidence presented at such hearing, may proceed to

enter an order for the immediate removal of the director or officer affected, a reprimand of the individuals and association concerned or a dismissal of the entire matter. If no hearing is requested within the time specified, the Commissioner may proceed to enter an order of removal on the basis of the facts set forth in his original statement.

Enforcement of Cease and Desist and Removal Orders

Sec. 8.15. In the case of violation or threatened violation of or failure or refusal to obey a final cease and desist order or a removal order, the Commissioner may apply to a district court of Travis County for an order enjoining the association, its directors, officers, employees, or agents from violating, failing or refusing to obey such order. The court shall grant such injunction upon a showing of substantial evidence to support the findings of fact in the Commissioner's order. No bond for injunction shall be required of the Commissioner.

Receivership

Sec. 8.16. If, in the judgment of the Commissioner, the public interest requires it, he may apply to a district court of the county in which the home office of the association is located for the appointment of a receiver for such association. Such court shall appoint a receiver as applied for if it finds substantial evidence to support any one or more of the following circumstances or conditions alleged to exist by the Commissioner in his application:

(1) that the association is insolvent in that the cash value of its assets realizable in a reasonable time is less than the total of its obligations to its creditors and the amount of its savings liability;

(2) that there has been a substantial dissipation of assets or earnings due to any violation or violations of applicable law, rules, or regulations, or to any unsafe or unsound practice or practices;

(3) that the association is in an unsafe and unsound condition to transact business in that there has been a substantial reduction of its net worth over the preceding 36 months (for this purpose, net worth shall be computed after the establishment of such valuation reserves and other reserves against possible losses as have been required by any supervisory authority having jurisdiction over the association or would be required under generally accepted accounting principles applicable to savings and loan associations) and has failed to restore such net worth reduction as ordered by the Commissioner;

(4) that the association and its directors and officers have violated any material conditions of its charter or bylaws, the terms of any final cease and desist order issued by the Commissioner, or any agreement between the association and the Commissioner;

(5) that the association, its directors, and officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs of the association by the Commissioner or other duly authorized personnel of the Savings and Loan Department.

All proceedings in regard to such applications shall be governed by the laws of this State applicable to receiverships generally. The Commissioner, or his deputy or a Savings and Loan Examiner shall be appointed by the court as a receiver. The receiver, upon appointment by the court, shall immediately take charge of the affairs of the association, subject to the direction of the court, and proceed to conduct the business of the association or to take such steps as may be necessary to conserve the assets and protect the rights of the creditors of the association and its members as may be ordered by the court. The official who is appointed receiver shall receive no additional compensation for such service. If the association is an institution insured by the Federal Savings and Loan Insurance Corporation, said corporation may be tendered appointment as receiver or co-receiver. If it accepts such appointment, it may, nevertheless, make loans on the security of or purchase at public or private sale any part or all of the assets of the association of which it is receiver or co-receiver, provided such loan or purchase is approved by such court. The directors, officers and attorneys of an association in office at the time of the initiation of any proceeding under this Section are expressly authorized to contest any such proceedings and shall be reimbursed for reasonable expenses and attorney's fees by the association or from its assets, the amount of which shall be fixed by the court.

[See Compact Edition, Volume 3 for text of 8.17]

Voluntary Supervisory Control

Sec. 8.18. If in connection with any cease and desist order the Commissioner requests the consent of the board of directors of the association to the placing of the association under supervisory control of the Commissioner, and a majority of such board affirmatively consents to such request, the Commissioner may appoint a supervisory agent to supervise and monitor the operations of the association during the period of supervision to which consent was given. During the period of supervision, the association, its directors, and officers shall act in accordance with such instructions and directions as may be given by the Commissioner through the supervisory agent and shall not act or fail to act except in compliance with such cease and desist order without the prior approval of the supervisor or the Commissioner. The cost incident to such supervision shall be fixed by the Commissioner and paid by the association.

[See Compact Edition, Volume 3 for text of 9.01 to 9.06]

CHAPTER TEN. CONVERSION, REORGANIZATION, MERGER AND CONSOLIDATION, VOLUNTARY LIQUIDATION

[See Compact Edition, Volume 3 for text of 10.01 and 10.02]

Reorganization, Merger, and Consolidation

Sec. 10.03. Pursuant to a plan adopted by the board of directors and approved by the Commissioner as equitable to the members of the association and as not impairing the usefulness and success of other properly conducted associations, an association shall have power to reorganize or to merge or consolidate with another association or Federal association; provided, that the plan of such reorganization, merger or consolidation shall be approved by a majority of the total vote the members are entitled to cast. Approval may be voted at either an annual meeting or at a special meeting called to consider such action. In all cases the corporate continuity of the resulting corporation shall possess the same incidents as that of an association which has converted in accordance with this Act. In the case of prior common ownership, the association in the proposed merger possessing the largest assets shall be designated as the home office. Any order of the Commissioner approving the reorganization, merger, or consolidation of any association with another association or Federal association shall become final 10 days after the same has been delivered unless an association within the vicinity of the reorganizing, merging, or consolidating associations shall within such time request a public hearing before the Commissioner in regard to such order, objecting to such order on the basis that the reorganization, merger, or consolidation would materially constrict the ability of the objecting association to compete in its vicinity. Such hearing shall be promptly held, and the Commissioner on the basis of the evidence presented shall thereupon either continue such order in effect, modify the same, or set it aside.

[See Compact Edition, Volume 3 for text of 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 11.17]

Disclosure of Examiners—Penalty

Sec. 11.18. The Commissioner and any examiner, inspector, deputy, assistant or clerk, appointed or acting under the provisions of this Act, failing to keep secret any facts or information regarding an association obtained in the course of an examination or by reason of his official position, except when the public duty of such officer required him to report upon or take official action regarding the affairs of the association so examined, or who wilfully makes a false official report as to the condition of such association, shall be removed from his position or office and shall be fined not more than Five Hundred Dollars (\$500), or imprisoned in the county jail for not more than one (1) year, or both. Reports of examinations made to the Commissioner shall be regarded as confidential and not for public record or inspection, except that for good reason same may be made public by the Commissioner, but copies thereof may, upon request of the association, be furnished to the Federal Home Loan Bank Board or to the Federal Home Loan Bank for the purpose of meeting the requirements of the Federal Home Loan Bank Act. Nothing herein shall prevent the proper exchange of information relating to associations and the business thereof with the representatives of savings and loan departments of other states, but in no case shall the private business or affairs of any individual association be disclosed. Any official violating any provision of this Section, in addition to the penalties herein provided, shall be liable, with his bondsmen, to the person or corporation injured by the disclosure of such secrets. The foregoing provisions shall not apply to any facts or information or to any reports of investigations obtained or made by the Commissioner or his staff in connection with any applications for a charter under this Act or in connection with any hearing held by the Commissioner under this Act, and any such facts, information or reports may be included in the record of the appropriate hearing. Notwithstanding the foregoing, the Commissioner shall report promptly to the Savings and Loan Section of the Finance Commission when either a cease and desist or removal order under Sections 8.13 and 8.14 of this article has been issued to an association. The Commissioner shall furnish such information about the association as the section members shall require in executive session.

Permanent Reserve Fund Stock to be Called Capital Stock

Sec. 11.19. The stock issued by an association under the authority of Section 2.02 shall hereafter be called "Capital" stock rather than "Permanent Reserve Fund" stock and the term "Permanent Reserve Fund" wherever such term appears in the Texas Savings and Loan Act, as amended (Article 852a, Vernon's Texas Civil Statutes), is hereby changed to "Capital."

Savings and Loan Section to Adopt Rules and Regulations for Reporting Change of Control of Associations

Sec. 11.20. The Savings and Loan Section of the Finance Commission shall adopt and promulgate such rules and regulations as may be required to effectively cause the timely reporting to the Commissioner of any change in the control of an association occurring by reason of change in ownership of voting stock or holdings of voting rights in the association. A report shall be required whenever

any person, partnership, trust, or group of associated persons acquires, receives, or becomes holder of:

- (a) 25 percent or more of the outstanding shares of any class of voting stock of an association or of the voting rights thereto;
- (b) 25 percent or more of the outstanding voting rights of an association; or
- (c) any appointment, designation, or right or substitution with respect to 25 percent or more of the outstanding voting rights of the institution.

[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; Acts 1977, 65th Leg., p. 642, ch. 239, §§ 1 to 5, eff. May 25, 1977.]

Section 6 of the 1977 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 to 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."

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]

Exceptions to Definition of Terms "Motor Carrier", "Contract Carrier" and "Transporting Property for Compensation or Hire" Sec. 1a.

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

(3) The term "transporting property for compensation or hire" defined in Section 1(j) of this Act does not include furnishing of equipment and drivers during the same period of time by separate persons to a person who is not a common carrier, contract carrier, or specialized motor carrier for his use in bona fide private carriage in furtherance of a primary nontransportation business, provided that the person furnishing the equipment is in the bona fide business of leasing or renting motor vehicle equipment without drivers for compensation to the general public and has complied with the provisions of Section 2(a), (b), and (c) of Chapter 209, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 6701c-1, Vernon's Texas Civil Statutes), and provided further that said equipment is furnished under a bona fide written lease or rental agreement providing for the exclusive use and possession of said equipment for a minimum of seven consecutive days, and provided further that the person to whom the equipment and drivers are furnished directs, supervises, and controls the drivers and the use of the equipment, including maintaining all dispatch records and maintaining and filing all safety records and reports required by the United States Department of Transportation, the Texas Department of Public Safety, and the commission. The person to whom the drivers are furnished may pay the drivers' compensation or any required taxes or workman's compensation insurance payments directly to the person furnishing the drivers.

[See Compact Edition, Volume 3 for text of 1b and 1c]

Transportation of Cornish Hens or Commercial Broilers

Sec. 1d. Provided, however, that in any proceeding in which or in connection with which the Com-

mission specifically finds that the public interest requires that specialized motor carriers of Cornish hens and/or commercial broilers or other specified special commodities should be permitted to commence new certificated operations or to perform new certificated services under existing conditions and without prior approval by the Commission of rates, fares and charges for such new service, then, in such event, and pursuant to such finding, such new certificated operations or new certificated services may be commenced and performed under existing conditions and absent prior approval by the Commission of applicable rates, fares and charges. The term "Cornish hen" means a chicken which is approximately five weeks of age and the term "commercial broiler" means a chicken which is seven to eight weeks of age.

[See Compact Edition, Volume 3 for text of 2 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; Acts 1977, 65th Leg., p. 598, ch. 215, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2038, ch. 816, § 1, eff. July 16, 1977.]

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 Bank-

ing 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 greater than twenty-five thousand (25,000) inhabitants according to the last preceding Federal Census shall pay to the Banking Commissioner of Texas each year a filing fee of 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.]

¹ Article 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 One Hundred Dollars (\$100.00) per day or fraction thereof, for each examiner, the total fee not to exceed Four Hundred Dollars (\$400.00) 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; Acts 1977, 65th Leg., p. 2093, ch. 839, § 1, eff. Aug. 29, 1977.]

TITLE 28

CITIES, TOWNS AND VILLAGES

CHAPTER ONE. CITIES AND TOWNS

Article

- 966i. Incorporation of Certain Areas Containing 8,000 or More Inhabitants and at Least 10,000 Acres [NEW].
- 969c-2. Possession and Control of Unkept or Abandoned Cemeteries Within Home-Rule City in County of 500,000 [NEW].
- 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].
- 974d-23. Validation of Consolidation and Governmental Proceedings of Certain Cities [NEW].
- 974d-24. Validation of Annexations and other Proceedings of Municipalities of 20,000 or Less [NEW].
- 974d-25. Validation of Boundary Actions of Cities within Counties of 1,000,000 or More [NEW].
- 974d-26. Validation of Incorporation, Boundary Lines and Governmental Proceedings; Exceptions [NEW].
- 974d-27. Validation of Assumption of Municipal Control of Certain Schools [NEW].

Art. 966i. Incorporation of Certain Areas Containing 8,000 or More Inhabitants and at Least 10,000 Acres

Sec. 1. Any unincorporated area having a population, according to the last preceding federal census, of 8,000 inhabitants or more, and located wholly within boundaries of a district created pursuant to Article XVI, Section 59, of the Texas Constitution, which district furnishes water and sewer services to householders, contains at least 10,000 acres, and portions of which district are located within the corporate boundaries of two or more municipalities, may be incorporated as a city or town, with all of the powers, rights, immunities, and privileges mentioned and described in the provisions of this title relating to cities and towns, in the manner described in Article 966, Revised Civil Statutes of Texas, 1925, for incorporating cities and towns, provided, however, that the application to become incorporated shall be signed by at least 500 resident electors.

Sec. 2. The application to become incorporated shall be filed in the office of the county judge of the county in which the unincorporated area is located. Within 10 days after receipt of a map or plat of the boundaries of the unincorporated area, verification by the county tax assessor and collector that the requisite number of resident electors have signed the

application to become incorporated, and certification by a registered professional engineer that the area described in the application contains at least 8,000 inhabitants and is located wholly within the boundaries of a district created pursuant to Article XVI, Section 59, of the Texas Constitution, which district furnishes water and sewer services to householders, contains at least 10,000 acres, and portions of which district are located within the corporate boundaries of two or more municipalities, the county judge shall order that an election be held for the purpose of submitting the question of incorporation to a vote of the people, in the manner prescribed by Article 966, Revised Civil Statutes of Texas, 1925.

Sec. 3. Notwithstanding any provision of this Act or any other law to the contrary, the application for incorporation, the order calling the incorporation election, the conduct and canvassing of said election, and, in the event of the passage of the election, the entry by the county judge upon the records of the commissioners court that the inhabitants of the city or town are incorporated within the boundaries thereof, and all subsequent actions of the incorporated city or town shall be valid, binding, and enforceable notwithstanding the absence of compliance with any requirement or requirements of the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes).

Sec. 4. The provisions of this Act shall not take effect until January 1, 1978. If, however, the unincorporated area described in Section 1 of this Act has been annexed by the principal city of the county wherein the unincorporated area lies or if annexation proceedings have been initiated by the principal city after January 1, 1977, then all provisions of this Act shall be held void.

Sec. 5. If any provision of this Act or its application to any person or circumstance is held to be invalid for any reason, the invalidity does not affect any other provision or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1977, 65th Leg., p. 2077, ch. 828, §§ 1 to 5, eff. Jan. 1, 1978.]

Art. 969c. Cemeteries

[See *Compact Edition, Volume 3 for text of 1 and 2*]

Donation for Maintenance and Upkeep of Neglected and Unkept Cemeteries

Sec. 2A. A person, association, foundation, or corporation interested in the maintenance and upkeep of neglected and unkept cemeteries under the possession and control of a city may make donations to the permanent and perpetual trust fund to be used to beautify and maintain the whole cemetery or burial grounds generally.

[See *Compact Edition, Volume 3 for text of 3 to 8*]

[Amended by Acts 1977, 65th Leg., p. 1388, ch. 555, § 7, eff. Aug. 29, 1977.]

Art. 969c-2. Possession and Control of Unkept or Abandoned Cemeteries Within Home-Rule City in County of 500,000 or More

Sec. 1. An incorporated home-rule city located wholly or partly in a county of 500,000 population or more, having a cemetery within its boundaries which threatens or endangers the health, safety, comfort, or welfare of the public shall, by resolution of its governing body, take possession and control of the cemetery on behalf of the public health, safety, comfort, and welfare to present and future generations.

Sec. 2. The resolution shall specify that 60 days after giving notice of a declaration of intent to take possession and control, the city in which the cemetery is located will remove or repair any fences, walls, or improvements, and will straighten and reset any memorial stones or embellishments that are found to be a threat or danger to the health, safety, comfort, or welfare of the public and take proper steps to restore and maintain the premises in orderly and decent condition. Notice shall be given by mail to all persons shown by the records in the county clerk's office to have an interest in the cemetery and to all interested persons by publication in a newspaper of general circulation in the city.

Sec. 3. Sixty days after giving notice, the city may remove or repair any fences, walls, or improvements, and will straighten and reset any memorial stones or embellishments that are found to be a threat or danger to the health, safety, comfort, or welfare of the public and restore the premises to decent condition. Thereafter, the city shall maintain the cemetery so that it will not endanger the health, safety, comfort, or welfare of the public.

Sec. 4. A cemetery in the possession and control of a city under the provisions of this Act shall remain open to the public. A person who has an interest in a grave or burial lot or who has a kinship

within the third degree of affinity or consanguinity to those interred may care for a grave or burial lot in the cemetery.

Sec. 5. No city nor officer or employee of the city shall be liable in civil damages or be criminally liable for acts performed in a good faith administration of this Act.

Sec. 6. The provisions of this Act are cumulative of all other remedies and provisions of the law relating to cemeteries, including the care, maintenance, ownership, operation, and control of cemeteries, perpetual trust funds to maintain cemeteries, and the abatement of nuisances and removal of cemeteries. The provisions of this Act do not apply to a perpetual care cemetery incorporated under the laws of this state or to a private family cemetery. [Acts 1977, 65th Leg., p. 1387, ch. 555, §§ 1 to 6, eff. Aug. 29, 1977.]

Art. 970a. Municipal Annexation Act

[See *Compact Edition, Volume 3 for text of 1 to 5*]

Fire Fighting Services in Industrial Districts

Sec. 5A. (a) A city may provide for adequate fire fighting services in that part of its extraterritorial jurisdiction designated under Section 5 of this Act as an industrial district. A city may provide for adequate fire fighting services by:

(1) directly furnishing fire fighting service which is paid for by the property owners of the district;

(2) contracting for the fire fighting service, whether or not all or part of the cost of the service is paid for by the property owners of the district; or

(3) the property owners providing for their own service under a contract with the city.

(b) A property owner who provides for his own fire fighting service under provisions of this Act shall not be required to pay any part of the cost of fire fighting services provided by the city to other property owners within the district.

[See *Compact Edition, Volume 3 for text of 6*]

Limitation on Annexations

Sec. 7.

[See *Compact Edition, Volume 3 for text of 7, A and 7, B*]

[Text of subd. (a) as amended by Acts 1977, 65th Leg., p. 1002, ch. 369, § 1]

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; and except that adjacent cities may accomplish mutually agreeable adjustments in their boundaries of areas that are less than 500 feet in width.

[Text of subd. (a) as amended by Acts 1977, 65th Leg., p. 1719, ch. 686, § 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, provided, however, that the provisions of this paragraph (a) shall not apply to any annexation initiated upon written petition of the owner or owners or of a majority of the qualified voters of the area to be annexed.

[See Compact Edition, Volume 3 for text of 7, B-1(b) to 7, D]

Annexation of Municipal Reservoir

Sec. 7a. A. A general law city may annex a reservoir owned by the city and used to supply water to the city, any land adjoining the reservoir that is subject to an easement for flood control purposes in favor of the city, and the right-of-way of any public roads or highways connecting the reservoir to the city by the most direct route, even though part of the annexed area is outside the city's extraterritorial jurisdiction or is narrower than five hundred (500) feet, if:

- (1) none of the annexed territory is more than five (5) miles from the city's corporate limits;
- (2) no part of the annexed territory is in another city's extraterritorial jurisdiction; and
- (3) the annexed area, excluding road or highway right-of-way, is less than six hundred (600) acres.

B. The provisions of this Act limiting the amount of territory a city may annex in a calendar year do not apply to an annexation covered by this section. Territory may be annexed under this section without the consent of the owners or residents of the annexed area.

[See Compact Edition, Volume 3 for text of 8 to 10]

Annexation of Certain Political Subdivisions

Sec. 11. A. In this Section, "water or sewer district" means any district or authority created by authority of either Article III, Section 52, Subsection

(b), Subdivisions (1) and (2), or Article XVI, Section 59, of the Texas Constitution, proposing to provide or actually providing water and sewer services or either of these services to household users as the principal function of the district, but does not include a district or authority if its primary function is the wholesale distribution of water.

B. A city may not annex territory within the boundaries of a water or sewer district unless it annexes the entire portion of the district that is outside the city's boundaries. This restriction does not apply to the annexation of territory in a water or sewer district if the water or sewer district is wholly or partly inside the extraterritorial jurisdiction of more than one city.

C. An annexation subject to Subsection B of this Section is exempt from the provisions of this Act limiting annexation authority to territory within a city's extraterritorial jurisdiction if:

(1) immediately before the annexation, at least half the area of the water or sewer district is inside the city's boundaries or its area of extraterritorial jurisdiction; and

(2) the city does not, in the annexation proceeding, annex any territory outside its extraterritorial jurisdiction except the part of the water or sewer district that is outside its extraterritorial jurisdiction.

D. Territory annexed in an annexation subject to Subsection B of this Section is included in computing the amount of territory the city may annex in a calendar year under Subsections B and C, Section 7 of this Act. If the area to be annexed exceeds the amount of territory the city otherwise would be permitted to annex, the city may nevertheless make the annexation, but it may make no other annexations in the remainder of the calendar year except annexations subject to Subsection B of this Section and annexations of territory that are excluded in the computation of territory a city may annex in a calendar year under Subsection B, Section 7 of this Act.

[Amended by Acts 1975, 64th Leg., p. 1865, ch. 585, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 313, ch. 147, § 1, eff. May 13, 1977; Acts 1977, 65th Leg., p. 1002, ch. 369, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1392, ch. 558, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1443, ch. 587, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1719, ch. 686, § 1, eff. Aug. 29, 1977.]

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 incorpora-

tion 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 any amendment have been approved by 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.]

Art. 974d-23. Validation of Consolidation and Governmental Proceedings of Certain Cities

Sec. 1. In each instance where an election has heretofore been held in each of two incorporated cities adjoining at a place 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 in 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. Nothing in this Act shall relieve the consolidated city from legal claims or actions which may have existed against the smaller city prior to consolidation.

Sec. 4. 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 1977, 65th Leg., p. 1010, ch. 374, §§ 1 to 4, eff. June 10, 1977.]

Art. 974d-24. Validation of Annexations and other Proceedings of Municipalities of 20,000 or Less

Sec. 1. This Act applies only to incorporated cities, towns, or villages operating under general law or under a home-rule charter and having a population of 20,000 or less, according to the last preceding federal census.

Sec. 2. In any case where a city, town, or village covered by this Act extended its boundaries by annexing adjacent territory, the annexation and boundary lines and all related proceedings are validated, without regard to any procedural irregularity that may have occurred. All governmental acts and proceedings of the city, town, or village since the annexation are validated.

Sec. 3. This Act does not apply to any matter that on the effective date of this Act:

(1) is involved in litigation, if the litigation ultimately results in the matter being held invalid; or

(2) has been held invalid by a final judgment of a court of competent jurisdiction.

[Acts 1977, 65th Leg., p. 1229, ch. 475, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 974d-25. Validation of Boundary Actions of Cities within Counties of 1,000,000 or More

Sec. 1. This Act shall apply to all incorporated cities and towns within the boundaries of any county of this state with a population of 1,000,000 persons or more, according to the last preceding federal census.

Sec. 2. All elections, election orders, election proceedings, ordinances, resolutions, petitions, and agreed court judgments heretofore held, ordered, enacted, or completed involving annexation or the relinquishment of extraterritorial jurisdiction by cities within counties having a population of 1,000,000 persons or more, according to the last preceding

federal census, are hereby in all things fully validated, confirmed, and approved, regardless of any irregularities or omissions in such ordinances, petitions, resolutions, elections, or other proceedings.

Sec. 3. The ordinances of all cities and towns in the class described in Section 1 of this Act fixing and prescribing the corporate limits extended by the annexation or attempted annexation of adjacent territory are hereby validated and confirmed.

Sec. 4. The boundary lines of all cities and towns within the classification described in Section 1 of this Act, including both the boundary lines covered by the original incorporation proceedings and any subsequent extensions thereof, are hereby in all things validated.

Sec. 5. The provisions of this Act shall not apply to any city or town now involved in litigation questioning the legality of the incorporation or extension of boundaries hereby validated if such litigation is ultimately determined against the legality 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. [Acts 1977, 65th Leg., p. 1882, ch. 748, §§ 1 to 5, eff. June 16, 1977.]

Art. 974d-26. Validation 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 such cities and towns, including any subsequent extensions of such boundaries by annexation, and the reduction or contraction of such boundaries by the discontinuation and disannexation of territory are validated in all respects, except that the extension of a boundary line by annexation into the extraterritorial jurisdiction of another city or town or the incorporation of a city or town in the extraterritorial jurisdiction of another city or town without that city's or town's consent, 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 including annexations, disannexations, and apportionment of extraterritorial juris-

diction and notices and attempted notices required therefor are validated in all respects as of the date of the proceedings.

Sec. 4. This Act does not apply to any matter involved in litigation on the date this Act takes effect if the litigation ultimately results against the legality of the matter. This Act does not apply to any matter that has been nullified by a final judgment of a court of competent jurisdiction.

[Acts 1977, 65th Leg., p. 2075, ch. 826, §§ 1 to 4, eff. Aug. 29, 1977.]

Art. 974d-27. Validation of Assumption of Municipal Control of Certain Schools

Sec. 1. If an incorporated city or town has assumed control of the public free schools within its corporate limits and if that assumption was approved by a majority of the property taxpaying voters of the city or town voting at an election held for that purpose, the election, the assumption, and all governmental acts and proceedings performed in the election and assumption and in governing the municipal school district are validated in all respects as of the date of the act or proceeding. The acts and proceedings may not be held invalid by reason of the fact that they may not have been performed in accordance with law.

Sec. 2. This Act does not apply to any matter involved in litigation on the date this Act takes effect if the litigation is ultimately resolved against the legality of the matter. This Act does not apply to any matter that has been nullified by a final judgment of a court of competent jurisdiction.

[Acts 1977, 65th Leg., p. 2081, ch. 831, §§ 1, 2, eff. June 16, 1977.]

Art. 976a. Zoning Ordinances Upon Annexation

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

Sec. 2. Repealed by Acts 1977, 65th Leg., p. 2000, ch. 798, § 1, eff. June 16, 1977.

[See Compact Edition, Volume 3 for text of 3 and 4]

[Amended by Acts 1977, 65th Leg., p. 2000, ch. 798, § 1, eff. June 16, 1977.]

CHAPTER THREE. DUTIES AND POWERS OF OFFICERS

Article

- 999d. Purchase of Liability Insurance for Certain Municipal Employees [NEW].
- 999e. Automobile Liability Coverage for Peace Officers and Fire Fighters [NEW].
- 999f. Salary Continuation Payments to Municipal Employees; Subrogation [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.]

Art. 999e. Automobile Liability Coverage for Peace Officers and Fire Fighters

Sec. 1. (a) Every incorporated city or town shall provide for insuring peace officers and fire fighters in its employ against liability to third persons arising out of the operation, maintenance, or use of any motor vehicle owned or leased by such city or town.

(b) Any incorporated city or town may elect to reimburse the actual cost of extended automobile liability insurance endorsements obtained by its peace officers and fire fighters on the individually owned automobile liability insurance policies of such peace officers and fire fighters. Such extended endorsement shall be in amounts not less than those required under this Act and shall extend the coverage to include the operation and use of city vehicles by such peace officers or fire fighters in the scope of their employment. Provided, however, that any incorporated city or town which elects to use the reimbursement method authorized under this subsection may require that all peace officers and fire fighters who operate and use motor vehicles present proof that an extended coverage endorsement has been purchased and that such extended coverage is current.

Sec. 2. Liability coverage provided pursuant to the requirements of this Act shall be in amounts not less than the amounts required by the Texas Motor Vehicle Safety-Responsibility Act, as amended (Article 6701h, Vernon's Texas Civil Statutes), to provide proof of financial responsibility.

Sec. 3. "Motor vehicle" means any motor vehicle for which motor vehicle automobile insurance is

written under the provisions of Subchapter A, Chapter 5, Insurance Code, as amended.

[Acts 1977, 65th Leg., p. 1394, ch. 560, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 999f. Salary Continuation Payments to Municipal Employees; Subrogation

If an incorporated city, town, or village pays benefits to a municipal employee under a salary continuation program when the employee is injured, the municipality is subrogated to the employee's right of recovery for personal injuries caused by the tortious conduct of a third party other than another employee of the same municipality. The subrogation extends only to the extent of payments made by the municipality. That a municipal employee has a cause of action against a third party for personal injuries is not a ground for the municipality to deny benefits under a salary continuation program.

[Acts 1977, 65th Leg., p. 1129, ch. 423, § 1, eff. June 15, 1977.]

Art. 1001. Treasurer, Duties, etc.

The treasurer shall give bond in favor of the city in such amount, and in such form as the city council may require, with sufficient security to be approved by the city council, conditioned for the faithful discharge of his duties. He shall receive and securely keep all moneys belonging to the city, and make all payments for the same upon the order of the mayor, attested by the secretary under the seal of the corporation. No order shall be paid unless the said order shall show upon its face that the city council has directed its issuance, and for what purpose. He shall render a full and correct statement of his receipts and payments to the city council, at their first regular meeting in every quarter and whensoever, at other times, he may be required by them so to do. He shall do and perform such other acts and duties as the city council may require. He shall receive such compensation as the city council shall fix.

[Amended by Acts 1977, 65th Leg., p. 1716, ch. 683, § 2, eff. Aug. 29, 1977.]

Art. 1003. Qualifications of Appointee

No person other than an elector resident of the city shall be appointed to any office by the city council. This article does not apply to the appointment of a city health officer appointed under Article 4425, Revised Civil Statutes of Texas, 1925, as amended, by the board of aldermen of an incorporated town or village containing fewer than 10,000 inhabitants.

[Amended by Acts 1977, 65th Leg., p. 891, ch. 335, § 1, eff. May 30, 1977.]

CHAPTER FOUR. THE CITY COUNCIL

Article

- 1010a. Cities of 1,200,000 or More, Salary and Expenses of Elected Officials [NEW].
 1015n. Dilapidated Structures; Authority of Certain Cities and Towns [NEW].
 1023a. Auditing of Records and Accounts; Annual Statements [NEW].

Art. 1010a. Cities of 1,200,000 or More; Salary and Expenses of Elected Officials

Sec. 1. The city council of an incorporated city having a population of 1,200,000 or more, according to the last preceding or any future federal census, may set the salary and expenses to be paid elected city officials. Said ordinance shall not take effect until the succeeding term, and the salary of a state district court judge of the county in which the city is located shall be the comparative salary; provided that a councilman's salary shall not exceed 40 percent of the comparative salary; the comptroller's salary shall not exceed the comparative salary; and the mayor's salary shall not exceed 150 percent of the comparative salary.

Sec. 2. (a) The city council may not adopt an ordinance under this Act unless the procedures prescribed by this section are followed.

(b) Before adopting an ordinance the city council shall publish notice in a newspaper of general circulation in the city. Notice must be published for two consecutive weeks immediately preceding the week in which the meeting is to be held and at which the proposed ordinance is to be considered. The notice must include a general description of the proposed ordinance, a statement that a public hearing will be held before the ordinance is adopted, a statement of the time and place of the hearing, and a statement that any interested person may appear and testify at the hearing.

(c) The city council must hold a public hearing before taking up an ordinance for consideration.

(d) An ordinance must be approved by a majority vote of the membership of the city council.

(e) A certified copy of an ordinance must be filed with the city secretary within 10 days after enactment, and it is effective on the first day of the succeeding term unless the ordinance prescribes a later effective date.

Sec. 3. (a) The city council may submit an ordinance adopted under this Act to the voters for their approval in the same fashion as charter amendments as provided in Article 1170, Revised Civil Statutes of Texas, 1925, as amended.

(b) After an election held under this Act, a two-year period of time must elapse prior to the calling of another election on the same proposition.

[Acts 1977, 65th Leg., p. 2079, ch. 829, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 1011e. Changes

Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a written protest against such change, signed by the owners of 20 per cent or more either of the area of the lots or land included in such proposed change, or of the lots or land immediately adjoining the same and extending 200 feet therefrom, such amendment shall not become effective except by the favorable vote of three-fourths of all members of the legislative body of such municipality. The legislative body of a municipality may also provide by ordinance that a vote of three-fourths of all its members is required to overrule a recommendation of the zoning commission that a proposed amendment, supplement, or change be denied. The provisions of the previous section relative to public hearing and official notice shall apply equally to all changes or amendments. [Amended by Acts 1977, 65th Leg., p. 1308, ch. 516, § 1, eff. Aug. 29, 1977.]

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. 1015g. Toll Bridges Over International Boundary Rivers, Powers Respecting

[See Compact Edition, Volume 3 for text of 1 and 2]

Tolls and Charges

Sec. 3. Any such city or town thus acquiring any such toll bridge shall have power, to be exercised by its Governing Body as expressed by Ordinance, to fix and to enforce and collect tolls and charges for the use thereof, and for the passage or transportation of persons or property, passengers, vehicles, freight and commodities, over and across such toll bridge. Such tolls and charges shall be fixed from time to time by the Governing Body of any such city or town, and collected under its direction, in accordance with the provisions and requirements of any permits or franchises granted or extended by any governmental authority in respect of or applicable thereto; and, subject to the provisions and requirements of any such permits or franchises, shall be just and reasonable and non-discriminatory, as determined by such Governing Body of any such city or town, and with no free service until the bonds herein provided to be issued to acquire such properties, together with the interest thereon, and all duties and obligations incident thereto or arising therefrom are first fully paid, met, and discharged; and, subject to the provisions and requirements of any such permits and franchises, shall be sufficient to produce revenues adequate:

(a) to pay all expenses necessary to the maintenance and operation of such toll bridge, and to

comply with the requirements and make all payments necessary under the provisions of any such permits and franchises therefor;

(b) to pay the interest on and the principal of all bonds and/or warrants issued under this Act when and as the same shall become due and payable;

(c) to pay all sinking fund and/or reserve fund payments agreed to be made in respect of any such bonds and/or warrants, and payable out of such revenues, when and as the same shall become due and payable; and

(d) to fulfill the terms of any agreements made with the holders of such bonds and/or warrants and/or with any person in their behalf;

(d-1) to recover a reasonable rate of return on invested capital;

(e) out of the revenues which may be received in excess of those required for the purposes specified in subparagraphs (a), (b), (c), (d), and (d-1) above, the Governing Body of any such city or town may in its discretion use such excess revenues for any or all of the following:

(1) to establish a reasonable depreciation and emergency fund;

(2) to retire by purchase and cancellation or redemption any outstanding bonds or outstanding warrants issued under the authority of this Act and amendments thereto;

(3) to provide needed budgetary support to local government for legitimate public purposes and for the general welfare;

(4) to apply the same to accomplish the purposes of this Act and amendments thereto.

(f) it is the intention of this Act that the tolls and charges herein provided for shall be those necessary to fulfill all obligations imposed by this Act and amendments thereto, and shall be sufficient to produce revenues to comply with the above subparagraphs (a), (b), (c), (d), (d-1), and (e). Nothing herein shall be construed as depriving the State of Texas or the United States of America, or other appropriate agencies having jurisdiction, of power to regulate and control tolls and charges to be collected for such purposes, or to provide for bridges over any such river to be used free of any tolls or charges, provided that the State of Texas does hereby pledge to and agree with the purchasers and successive holders of the bonds and/or warrants issued hereunder that the State will not limit or alter the power hereby vested in any such city or town or the Governing Body thereof to establish and collect such tolls and charges as

will produce revenues sufficient to pay the items specified in subparagraphs (a), (b), (c), (d), (d-1), and (e) of this Section 3 of this Act, or exercise its powers in any way to impair the rights or remedies of the holders of the bonds and/or warrants, or of any person in their behalf, until the bonds and/or warrants, 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/or warrant holders and all other obligations of any such city or town in connection with such bonds and/or warrants are fully met and discharged.

(g) this section shall apply to international toll bridges now in existence and owned by a city or that may be acquired or controlled by a city in the future.

[See Compact Edition, Volume 3 for text of 4 to 19]

[Amended by Acts 1977, 65th Leg., p. 366, ch. 180, § 1, eff. Aug. 29, 1977.]

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.]

Art. 1015m. Repealed by Acts 1977, 65th Leg., p. 2087, ch. 835, § 9, eff. Aug. 29, 1977

See, now, art. 6701g-2.

Art. 1015n. Dilapidated Structures; Authority of Certain Cities and Towns

(a) A city or town incorporated or operating under Chapters 1-10, Title 28, Revised Civil Statutes of Texas, 1925, as amended, may adopt an ordinance that requires the demolition or repair of a building that is dilapidated, substandard, unfit for human habitation, or a hazard to the health, safety, and welfare of the citizens.

(b) The ordinance must:

(1) establish minimum standards for continued use and occupancy that apply to all buildings regardless of date of construction;

(2) provide for proper notice to the owner; and

(3) provide for a public hearing.

(c) After a hearing, if the building is found to be in violation of the standards set out in the ordinance, the city may direct that the building be repaired or removed within a reasonable time.

(d) After the expiration of the allotted time, the city may remove the building at its own expense. If a city incurs removal expenses under this Act, it has a lien against the property to which the building was attached. The lien is extinguished if the property owner reimburses the city for the removal expenses. The lien may not be enforced by forced sale. [Acts 1977, 65th Leg., p. 1402, ch. 566, § 1, eff. Aug. 29, 1977.]

Arts. 1022, 1023. Repealed by Acts 1977, 65th Leg., p. 1716, ch. 683, § 3, eff. Aug. 29, 1977.

See, now, art. 1023a.

Art. 1023a. Auditing of Records and Accounts; Annual Statements

(a) Each incorporated city, town, and village in this state, hereinafter referred to as "city," including any city operating under a special charter, or home-rule city operating under a charter adopted or amended pursuant to Article XI, Section 5, of the Texas Constitution, or city operating under the general laws of this state, shall have its records and accounts audited and a financial statement based on such audit prepared annually. Any such city whose records and accounts are not audited annually by a person or officer prescribed by statute or charter provision, or by a person in the regular employ of such city, must engage at its own expense a Texas Certified Public Accountant or a public accountant holding a permit to practice from the Texas State Board of Public Accountancy to conduct the audit and to prepare the financial statement required herein.

(b) The annual financial statement of such city, together with the auditor's opinion thereon, shall be filed in the office of the city secretary or clerk of such city within 120 days of the close of the city's fiscal year and shall be a public record.

[Acts 1977, 65th Leg., p. 1716, ch. 683, § 1, eff. Aug. 29, 1977.]

Section 4 of the 1977 Act provided as follows:

"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 FIVE. TAXATION

Article

1066d. Tax Increment Act of 1977 [NEW].

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. 1066b. Assessor, Collector, and Equalization Board Acting for Included Municipality or District

Sec. 1. Any incorporated city, town or village, independent school district, drainage district, water control and improvement district, water improvement district, navigation district, road district, or any other municipality or district in the State of Texas, located entirely or partly within the boundaries of another municipality or district, is hereby empowered, to authorize, by ordinance or resolution, the Tax Assessor, Board of Equalization and Tax Collector of the municipality or district in which it is located, entirely or partly, to act as Tax Assessor, Board of Equalization and Tax Collector respectively for the municipality or district so availing itself of the services of said officers and Board of Equalization.

The property in said municipality or district utilizing the services of such Assessor, Board of Equalization and Collector shall be assessed at not more than the value for which it is assessed for taxing purposes by the municipality or district the services of whose officers and Board of Equalization are being utilized.

When the ordinance or resolution is passed making available their services, said Assessor shall assess the taxes for and perform the duties of Tax Assessor for the municipality or district so availing itself of his services; the said Board of Equalization shall act as and perform the duties of a Board of Equalization for said municipality or district so availing itself of its services, and said Collector shall collect the taxes

and assessments for, and turn over as soon as collected to the depository of said municipality or district or to such other authority as is authorized to receive such taxes and assessments, all taxes or money, so collected, and shall perform the duties of Tax Collector of said municipality or district so availing itself of his services.

In all matters pertaining to such assessments and collections the said Tax Assessor, Board of Equalization and Tax Collector shall be, and hereby are, authorized to act as and shall perform respectively the duties of Tax Assessor, Board of Equalization and Tax Collector of, and according to the ordinances and resolutions of the municipality or district so availing itself of their services, and according to law.

[See Compact Edition, Volume 3 for text of 1a to 5]

[Amended by Acts 1977, 65th Leg., p. 1679, ch. 662, § 1, eff. Aug. 29, 1977.]

The 1977 Act provides in § 2 as follows:

"Ordinances and resolutions adopted by a district in accordance with Section 1, Chapter 351, Acts of the 49th Legislature, 1945, as amended (Article 1066b, Vernon's Texas Civil Statutes), before the effective date of this Act are validated."

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 bringing 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 peri-

od. 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.]

Art. 1066d. Tax Increment Act of 1977

[Text of article conditioned on constitutional amendment]

Short Title

Sec. 1. This Act may be cited as the "Texas Tax Increment Act of 1977."

Public Purposes

Sec. 2. It is hereby found and declared that the blighted commercial areas of municipalities in this state constitute a serious and growing menace, injurious and inimical to the public health, safety, morals, and welfare of the residents of the state; that the existence of such areas necessitates excessive and disproportionate expenditures of public funds for the preservation of the public health and safety and for the maintenance of adequate police and fire protection and other public services and facilities, and that the existence of such areas constitutes an economic and social liability and substantially impairs the sound growth of such municipalities; that the prevention and elimination of blight in the commercial areas of municipalities is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which, while contributing little to the tax income of the state and its municipalities, consume an excessive proportion of its revenues because of the extra services required for police, fire, and other forms of protection; that by such prevention and elimination, property values freed from the depressing influence of blight will be stabilized, and tax burdens will be distributed more equitably, employment will be increased, and the financial and capital resources of the state, required for the prosperity of and provision of necessary governmental services to its people will be strengthened; that this menace can best be remedied by conjunctive action of private enterprise and municipal governments through exercise of the powers provided hereunder and acting pursuant to approved redevelopment plans; that the execution of plans for the repair and rehabilitation of buildings and improvements in such areas, the furnishing of public improvements where necessary to eliminate conditions of blight or to prevent the development, spread, or recurrence of such conditions in such areas, and any other assistance which may be given by any municipality in

connection therewith, are public uses and purposes for which public credit may be used; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination.

Definitions

Sec. 3. In this Act:

(a) "Blight" means a condition characterized by the presence of deteriorated or deteriorating buildings, structures, or improvements, or by reason of the predominance of defective or inadequate streets or defective or inadequate street layout or accessibility, or by reason of the existence of unsanitary, unhealthful, or other hazardous conditions which endanger the public health, safety, morals, or welfare of inhabitants of the municipality, or by reason of the predominance of the deterioration of site or other improvements, or by reason of the existence of conditions which endanger life or property by fire or from other causes, or by reason of the existence of tax delinquencies, or by reason of the existence of any combination of the hereinabove stated causes, factors, or conditions, which produces effects that substantially retard or arrest the provision of a sound and healthful environment, or which results in an economic or social liability to the municipality, and thus constitutes a menace to the public health, safety, morals, or public welfare of the municipality.

(b) "Captured market value" means any amount by which the current market value of property within the boundaries of a redevelopment district exceeds its market value at the time such district was designated in accordance with the requirements of this Act.

(c) "Commercial area" means a mercantile area, whether so designated by zoning or otherwise, the predominant uses within which are related to commerce and business activities.

(d) "Governing body" means the legislative body of any municipality in this state.

(e) "Municipality" means any city, town, or village incorporated under the laws of this state.

(f) "Redevelopment district" means a specific area within the corporate limits of any municipality which has been so designated by the governing body. No less than 60 percent of the area of any such district shall consist of land which has been platted and developed.

(g) "Redevelopment plan" means a statement of objectives respecting the improvement of a redevelopment district.

(h) "Redevelopment program" means a series of planned activities undertaken in a redevelopment district for the elimination or prevention of blight.

(i) "Taxable property" means all real taxable property, but shall not include personal property or intangible property.

(j) "Tax assessor-collector" means the tax assessor-collector of the municipality.

(k) "Taxing entity" means any governmental unit, including the state and its political subdivisions, but not including municipalities, authorized by law to levy taxes on property located within a redevelopment district.

(l) "Tax increment" means that amount of property taxes levied and collected each year on property within a redevelopment district in excess of that amount which was levied and collected on such property during the year prior to the date the redevelopment plan for such district was adopted. A tax increment is calculated by multiplying the total in property taxes levied and collected by the municipality and all other taxing entities on the taxable property within a redevelopment district in any year by a fraction having a numerator equal to that year's market value of all taxable property in such district minus the tax incremental base and a denominator equal to that year's market value of all taxable property in such district.

(m) "Tax incremental base" means the aggregate market value of all taxable property within a redevelopment district on the date such district was designated by the governing body.

(n) "Tax increment fund" means a special fund into which all tax increments produced from the captured market value of property located within a redevelopment district are paid, and from which money is disbursed to pay redevelopment costs with respect to such district or to satisfy claims of holders of tax increment bonds issued with respect to such district.

Powers of Municipalities

Sec. 4. (a) In addition to any other powers conferred by law, a municipality may exercise any powers necessary and convenient to carry out the purposes of this Act, including the power to:

(1) create and define the boundaries of redevelopment districts;

(2) cause redevelopment plans to be prepared, to approve such plans, and to implement the provisions and effectuate the purposes of such plans;

(3) issue tax increment bonds; or

(4) enter into any contracts or agreements, including agreements with bondholders or with the governing body of any taxing entity, determined by the governing body to be necessary or convenient to implement the provisions and effectuate the purposes of redevelopment plans.

(b) Consistent with any redevelopment plan adopted by the governing body, the municipality may acquire blighted, deteriorated, deteriorating undeveloped, or inappropriately developed real proper-

ty for the preservation or restoration of historic sites, beautification or conservation, or for the provision of public works or facilities or other public purposes, acquire, construct, reconstruct, or install public works, facilities, and sites or other improvements, including but not limited to utilities, streets, street lights, water and sewer facilities, pedestrian malls and walkways, parks, flood and drainage facilities, and parking facilities.

(c) The governing body may create a new agency or may designate an existing agency to administer any redevelopment district authorized under this Act. The administrator of such agency may, subject to any limitations imposed by the governing body, exercise the following powers:

(1) acquire property or easements through negotiation;

(2) enter into operating contracts on behalf of the municipality for operation of any public facilities constructed pursuant to this Act;

(3) enter into contracts for construction of any public facilities within the redevelopment district; or

(4) apply for grants from the government of the United States of America or other sources.

Designation of Development Districts

Sec. 5. (a) The governing body may designate a redevelopment district within the boundaries of the municipality after the following requirements are met:

(1) The governing body has conducted a public hearing at which interested parties are afforded a reasonable opportunity to express their views on the proposed redevelopment district. Notice of such hearing shall be published in a newspaper having general circulation in the municipality not more than 20 nor less than 10 days prior to the hearing. Prior to such publication, a copy of the notice shall be sent by registered mail to the chief executive officer of each taxing entity.

(2) The governing body has adopted a resolution which:

(i) describes the boundaries of the redevelopment district with sufficient definiteness to identify with ordinary and reasonable certainty the territory included therein;

(ii) provides for the creation of the proposed redevelopment district as of a date prescribed by such resolution;

(iii) assigns a name to such district for identification purposes. The first such district created shall be known as "Redevelopment District Number One, City of _____." Each subsequently created district shall be assigned the next consecutive number;

(iv) contains findings that not less than 25 percent, by area, of the property within the proposed district is blighted and that the redevelopment of the district is necessary to promote the general and economic welfare of the city.

(3) The governing body has adopted a redevelopment plan for the proposed district which shall contain findings that such plan is feasible and which, at a minimum, includes the following:

(i) a statement listing the kind, number, and location of all proposed public facilities to be constructed within such district;

(ii) an economic feasibility study which shows that the benefits derived from the redevelopment plan will exceed the costs, and that the income therefrom will be sufficient to pay for the proposed redevelopment program;

(iii) a detailed list of estimated redevelopment costs;

(iv) a description of the specific methods by which all estimated redevelopment costs will be paid and the time when such costs or monetary obligations related thereto are to be incurred;

(v) detailed estimates of tax increments;

(vi) the exact amount of bonded indebtedness to be incurred;

(vii) the duration of the existence of the redevelopment district;

(viii) a statement of the estimated impact of tax increment financing on the market value of property located in the district for all taxing entities;

(ix) the portion of captured market value that the municipality intends to use for purposes of tax increment financing;

(x) a map showing existing uses and conditions of property in such district;

(xi) a map showing proposed improvements and uses therein.

(4) The governing body has adopted a resolution providing for the establishment of a fund, to be known as the "Tax Increment Fund," into which all tax increments produced from the captured market value of property located within the proposed district will be paid, and from which money shall be disbursed to pay redevelopment costs with respect to such district or to satisfy claims of holders of tax increment bonds issued with respect to such district.

(b) The aggregate total market value of taxable property located within redevelopment districts designated by the governing body, and for which unre-

covered cost of tax increment bonds remains, shall never exceed five percent of the total market value of taxable real property in the municipality.

(c) Modifications to a redevelopment plan may be made by the governing body upon such notice and after such public hearings and agreements as are required for approval of the original plan.

Computation of Tax Increments

Sec. 6. (a) For purposes of this Act, the market value of property located within a redevelopment district shall be determined by the tax assessor-collector, and only the tax assessor-collector, during the time such district exists. Provided, however, that such determination shall require the concurrence of the comptroller; and provided further, that any property owner aggrieved by a determination of the tax assessor-collector shall have the same right of appeal provided by law to owners of property not affected by this Act.

(b) At the time a redevelopment district is designated by the governing body, the tax assessor-collector shall, with the concurrence of an independent real estate appraiser, certify to the governing body the market value of property within the boundaries of such district. Property taxable at the time the redevelopment district is designated shall be included at its most recently determined market value; property exempt from taxation at the time of redevelopment district was designated shall be included at zero.

(c) The tax assessor-collector shall, within one year of the time a redevelopment district is designated and annually thereafter, certify to the governing body the amount of the captured market value of property within the boundaries of the district and the amount in tax increments produced from such captured market value.

(d) For any years in which taxes are to be paid into the tax increment fund required under Paragraph (4) of Subsection (a) of Section 5, any captured market value with respect to a redevelopment district shall not be considered by any taxing entity in computing any debt limitation or for any other purpose except in determining the amount to be paid into the tax increment fund.

Allocation of Tax Collections and Tax Increments

Sec. 7. (a) For purposes of this Act, the tax assessor-collector shall have the sole authority and duty to collect the taxes levied by the municipality and all other taxing entities on property located within a redevelopment district, and for allocating taxes and tax increments in the manner required by this Act.

(b) Commencing with the first payment of taxes levied by the municipality or other taxing entities

subsequent to the time a redevelopment district is designated, receipts from such taxes shall be allocated and paid over as follows:

(1) There shall first be allocated and paid over in such amounts as belong to each respectively, to the municipality and to each other taxing entity, all of the property taxes collected which are produced from the tax incremental base.

(2) There shall next be deposited into the tax increment fund established for such district all tax increments produced from the captured market value of property located within the district.

Tax Increment Bonds

Sec. 8. (a) A municipality shall, in addition to any other powers vested in it, have the power to issue tax increment bonds, the proceeds of which may be used to pay redevelopment costs with respect to the district on behalf of which the bonds were issued or to satisfy claims of holders of such bonds. The municipality shall also have the power to issue refunding bonds for the payment or retirement of tax increment bonds previously issued by it. Such tax increment bonds shall be made payable, as to both principal and interest, solely from tax increments allocated to and paid into the tax increment fund established by the municipality in accordance with this Act, or from any private sources, or contributions or other financial assistance from the state or United States government, or by any combination of these methods.

(b) Tax increment bonds issued under this Act, together with interest thereon and income therefrom, shall be exempt from all taxes. Bonds issued under this Act shall be authorized by resolution or ordinance of the governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rates or rate, be in such denomination or denominations, be in such form (either coupon or registered), carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto. Such bonds may be sold at not less than par at public sales held after notice published prior to such sale in a newspaper having a general circulation in the municipality and in such other medium of publication as the governing body may determine, or may be exchanged for other bonds on the basis of par. Any provision of any law to the contrary notwithstanding, any bonds issued

pursuant to this Act shall be fully negotiable. In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this Act or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with a redevelopment district, as herein defined, shall be conclusively deemed to have been issued for such purposes, and the redevelopment of such district shall be conclusively deemed to have been planned, located, and carried out in accordance with the provisions of this Act.

(c) All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest any sinking funds, money, or other funds belonging to them or within their control in any tax increment bonds issued by a municipality pursuant to this Act. Such bonds shall be authorized security for all public deposits. Any persons, political subdivisions, and officers, public or private, are authorized to use any funds owned or controlled by them for the purchase of any such bonds. Nothing in this Act with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

(d) Tax increment bonds shall be payable only out of the tax increment fund created pursuant to Paragraph (4) of Subsection (a) of Section 5. The governing body may irrevocably pledge all or a part of such fund to the payment of such bonds or notes. Such fund or the designated part thereof may thereafter be used only for the payment of such bonds and interest thereon until the same have been fully paid, and a holder of such bonds or of any coupons appertaining thereto shall have a lien against such fund for payment of such bonds or notes and interest thereon and may either at law or in equity protect and enforce such lien.

(e) To increase the security and marketability of tax increment bonds, the municipality may create a lien for the benefit of the bondholders upon any public improvements or public works financed thereby or the revenues therefrom, or make such covenants and do any and all such acts as may be necessary or convenient or desirable in order to additionally secure such bonds or tend to make the bonds more marketable according to the best judgment of the governing body.

(f) Money shall be disbursed from the tax increment fund only to satisfy the claims of holders of tax increment bonds issued in aid of the redevelopment district with respect to which the fund was established, or to pay redevelopment costs with re-

spect to such district. "Redevelopment costs" means any expenditure made or estimated to be made, or monetary obligations incurred or estimated to be incurred, by the municipality which are listed in a redevelopment plan as costs of public works or improvements within a redevelopment district, plus any costs incidental thereto, diminished by any income or revenues other than tax increments received or reasonably expected to be received by the municipality in connection with the implementation of such plan. Such redevelopment costs include, but are not limited to:

(1) capital costs, including but not limited to the actual costs of the construction of public works or improvements, new buildings, structures, and fixtures; the demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and fixtures; the acquisition of equipment; and the clearing and grading of land;

(2) financing costs, including but not limited to all interest paid to holders of tax increment bonds issued to pay for redevelopment costs and any premium paid over the principal amount thereof because of the redemption of such obligations prior to maturity;

(3) professional service costs, including but not limited to costs incurred for architectural, planning, engineering, or legal services;

(4) imputed administrative costs, including but not limited to reasonable charges for the time spent by employees of the municipality in connection with the implementation of a redevelopment plan; or

(5) organizational costs, including but not limited to the costs of conducting studies and the costs of informing the public with respect to the creation of redevelopment districts and the implementation of redevelopment plans.

(g) Subject to any agreement with the holders of tax increment bonds, money in a tax increment fund may be temporarily invested in the same manner as other municipal funds.

(h) After all redevelopment costs and all tax increment bonds issued with respect to a redevelopment district have been paid or the payment thereof provided for, and subject to any agreement with bondholders, if there remain in such fund any money, it shall be paid over to the municipality and other taxing entities levying taxes on property within such district in such amounts as belong to each respectively.

(i) Tax increment bonds issued under this Act shall not be general obligations of the municipality, nor in any event shall they give rise to a charge against its general credit or taxing powers or be payable other than as provided by this Act, and any

tax increment bonds issued under this Act shall so state on their face.

(j) Tax increment bonds issued under this Act shall not be included in any computation of the debt of the issuing municipality.

(k) Tax increment bonds may not be issued in an amount exceeding the aggregate costs of implementing the redevelopment plan for the district in aid of which they were issued, and such bonds shall mature over a period not exceeding 20 years from the date thereof.

Annual Report

Sec. 9. (a) On or before July 1 of each year, the governing body shall submit to the chief executive officer of every taxing entity a report on the status of such district. The report shall include the following information:

(1) the amount and source of revenue in the tax increment fund established in accordance with the requirements of this Act;

(2) the amount and purpose of expenditures from the fund;

(3) the amount of principal and interest due on any outstanding bonded indebtedness;

(4) the tax incremental base and the current captured market value retained by the district; and

(5) the captured market value shared by the municipality and other taxing entities, the total in tax increments received, and any additional information necessary to demonstrate compliance with the tax increment financing plan adopted by the governing body.

(b) On or before July 1 of each year, the governing body shall cause to be published in a newspaper of general circulation in the municipality a statement showing:

(1) the tax increments received and expended during the previous year;

(2) the original market value and captured market value of all property located within the redevelopment district;

(3) the amount in outstanding indebtedness incurred in aid of the redevelopment district; and

(4) any additional information the governing body deems necessary.

Commencement and Completion of Redevelopment

Sec. 10. Any redevelopment plan approved in accordance with the provisions of this Act shall fix a date upon which redevelopment activities shall:

(1) commence, which date shall not be more than six months from the date the plan is approved by the governing body; and

(2) be completed, which date shall be not more than five years from the date the plan was approved.

Limitation on Exercise of Powers

Sec. 11. The powers conferred upon municipalities by this Act shall be exercised only in commercial areas.

Severability

Sec. 12. Except to the extent otherwise specifically provided in this Act, if any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does 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.

Effect of Act

Sec. 13. This Act takes effect only if and when the constitutional amendment proposed by S.J.R. No. 44, 65th Legislature, is adopted by the qualified electors of this state.

[Acts 1977, 65th Leg., p. 956, ch. 361, §§ 1 to 13, eff. upon adoption of S.J.R. No. 44.]

CHAPTER NINE. STREET IMPROVEMENTS

Article

1105b-4. Validation of Assessments and Reassessments for Street, Sewer and Water Improvements [NEW].

1105b-5. Validation of Certain Governmental Acts and Proceedings Regarding Paving Contracts [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.]

Art. 1105b-5. Validation of Certain Governmental Acts and Proceedings Regarding Paving Contracts

Sec. 1. In any case where an incorporated city or town has contracted on behalf of itself and an independent school district and the county in which the city or town is located for the seal coating of roads or parking areas of the governmental entities by a private contractor, all governmental acts and

proceedings and all transactions relating to the contract are validated, notwithstanding the failure of any one or more of the governmental entities to comply with all legal requirements concerning the awarding of the contract.

Sec. 2. This Act does not apply to:

(1) any act, transaction, or proceeding that occurred before September 1, 1975;

(2) any matter that on the effective date of this Act has been declared invalid by a final judgment of a court of competent jurisdiction; or

(3) any matter involved in litigation on the effective date of this Act if the litigation ultimately results in the matter being held invalid by a final judgment of a court of competent jurisdiction.

[Acts 1977, 65th Leg., p. 1820, ch. 729, §§ 1, 2, eff. Aug. 29, 1977.]

CHAPTER TEN. PUBLIC UTILITIES

2. Encumbered City System

Article

1111d. Payment of Principal and Interest [NEW].

1118n-12. Refunding Certain Bonds and Other Obligations of Cities, Towns, and Villages [NEW].

1. CITY OWNED UTILITIES

Art. 1109j. Contracts with Water Districts or Non-profit Corporations for Water, Sewer or Drainage Services

Authorization

Sec. 1. Any city or town, whether operating under the General Law or under its special or home rule charter, is authorized to enter into a contract with a district organized under the authority of Article XVI, Section 59 of the Constitution of Texas or any corporation or corporations organized to be operated without profit, and any such district or corporation is authorized to enter into a contract with any such city or town, under the terms of which such district, corporation or corporations will acquire for the benefit of and convey to the city or town one or more water supply or treatment systems, water distribution systems, sanitary sewer collection or treatment systems or works or improvements necessary for the drainage of lands in the city, either singularly or together, and in connection with such acquisition make such improvements, enlargements and extensions of and additions to the existing facilities of such city or town as may be provided for in such contract.

Payments for Water, Sewer or Drainage Services; Purchase of Systems; Pledge of Revenues

Sec. 2. When any such contract shall provide that the city or town shall become the owner of such water, sewer or drainage system or systems upon completion of construction or at such time as all debt

incurred by such district or corporation in the acquisition, construction, improvement or extension of such system or systems is paid in full, such city or town shall be authorized to make payments to such district or corporation for water, sewer or drainage services to part or all of the inhabitants of such city or town. Such contract may provide for purchase by the city or town of such system or systems by periodic payments to such district or corporation by the city or town in amounts which, together with the net income of the district or corporation, will be sufficient to pay the principal of and interest on the bonds of the district or corporation as they become due. Such contract may provide that any payments under this Section 2 shall be payable from and secured by a pledge of a specified portion of the revenues of the water system, the sewer system or the drainage system or systems of the city or town or may provide for the levying of a tax to make such payments, or may provide for such payments to be made from a combination of such revenues and taxes.

[See Compact Edition, Volume 3 for text of 3 to 5]

[Amended by Acts 1977, 65th Leg., p. 1307, ch. 515, §§ 1, 2, eff. Aug. 29, 1977.]

2. ENCUMBERED CITY SYSTEM

Art. 1111d. Payment of Principal and Interest

Sec. 1. An incorporated city with a population of 75,000 or more according to the last preceding federal census, in issuing revenue bonds under Articles 1111 through 1118 of this chapter, as part of the cost of constructing new electric utility plan facilities may set aside and use a portion of the proceeds from the sale of the bonds, to the extent provided in the ordinance authorizing their issuance:

1. to pay interest on bonds, the proceeds of which are for the construction of the facilities, to the first interest payment date following the date the new electric utility facilities are estimated to become operational; and

2. to establish or supplement a reserve fund created for the benefit of the holders of the bonds.

Sec. 2. Bond proceeds, interest and sinking funds, and reserve funds, pending their use for their intended purposes, may be invested in any securities, interest-bearing certificates, or time deposits as are specified in the proceedings authorizing the issuance of the bonds.

Sec. 3. This article is full authority for the exercise of the powers granted. It controls over any other state law or any provision of a city charter. [Added by Acts 1977, 65th Leg., p. 1273, ch. 495, § 1, eff. Aug. 29, 1977.]

Art. 1112. Vote, etc.

Sec. 1. Except as provided in Section 2 of this article, no such light, water, sewer or natural gas systems, parks and/or swimming pools, shall be sold without authorization by a majority vote of the qualified voters of such city or town; nor shall same be encumbered for more than Ten Thousand Dollars (\$10,000) unless authorized in like manner, except for money for acquisitions, extensions, construction, improvement, or repair of such systems and facilities, or to refund any existing indebtedness lawfully created for such purposes. Such vote to sell or encumber such systems or facilities shall be ascertained at an election, which shall be held in accordance with the laws applicable to the issuance of municipal bonds by such cities and towns. The encumbrances authorized herein shall be applicable only to bonds payable from revenues derived from said system.

Sec. 2. A city with a population of more than 1,200,000, according to the last preceding federal census, may sell an unencumbered natural gas system owned by it without an election as required by Section 1 of this article.

[Amended by Acts 1977, 65th Leg., p. 1910, ch. 762, § 1, eff. Aug. 29, 1977.]

Art. 1118a. Mortgage of Gas, Water, Light or Sewer Systems by Cities and Towns

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

Sec. 2. (a) Except as provided in Subsection (b) of this section, no such system or systems shall ever be sold until such sale is authorized by a majority vote of the qualified voters of such city; nor shall same be encumbered for more than Five Thousand (\$5,000.00) Dollars except for purchase money or to refund any existing indebtedness or for repair or reconstruction, unless authorized in like manner. Such vote where required shall be ascertained at an election of which notice shall be given in like manner as and which shall be held in like manner as in the cases of the issuance of municipal bonds by such city.

(b) A city with a population of more than 1,200,000, according to the last preceding federal census, may sell an unencumbered natural gas system owned by it without an election as required by Subsection (a) of this section.

[See Compact Edition, Volume 3 for text of 3 to 9]

[Amended by Acts 1977, 65th Leg., p. 1911, ch. 762, § 2, eff. Aug. 29, 1977.]

Art. 1118n-11. Refunding Certain Outstanding Interest Bearing Obligations

Issuer Defined

Sec. 1. The term "issuer," as used in this Act shall mean and include any city in the State of

Texas which owns the water, sewer and electric utility systems serving such city and which operates all such utilities as a combined system and has issued and has outstanding revenue bonds payable from the revenues of such combined system.

[See Compact Edition, Volume 3 for text of 2 to 12]

[Amended by Acts 1977, 65th Leg., p. 1284, ch. 504, § 1, eff. Aug. 29, 1977.]

The 1977 Act provides in § 2 as follows:

"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."

Art. 1118n-12. Refunding Certain Bonds and Other Obligations of Cities, Towns, and Villages

Definitions

Sec. 1. (a) The term "Issuer," as used in this Act, shall mean each city, town, and village in the state which at any time has outstanding bonds or other obligations which are secured solely by a pledge of the net revenues of its electric light and power system.

(b) The term "Board," as used in this Act, shall mean the city council, city commission, board of commissioners, board of aldermen, or other group which is the governing body of an issuer.

Authority to Issue Refunding Bonds; Security; New Bonds; Maturity; Negotiability; Conversion; Election not Required

Sec. 2. The board of any issuer is authorized to issue refunding bonds to refund all or any part of any outstanding bonds or other interest bearing obligations secured solely by a pledge of the net revenues of the issuer's electric light and power system, and any interest coupons appertaining thereto. One or more outstanding issues and any part of one or more outstanding issues of bonds or other interest bearing obligations, and any interest coupons appertaining thereto, may be refunded under this Act; provided that when part of one or more of these issues is being refunded, the board must demonstrate to the satisfaction of the attorney general, prior to his approval of the bonds as required in this Act, that adequate pledged resources are estimated to be available, based on then current conditions, to provide for the payment, when due, of the unrefunded part of the issue or issues. The refunding bonds, and the interest and redemption premium, if any, may be secured by first or subordinate liens on and pledges of, and made payable from, the same source as the obligations being refunded and may be secured by first or subordinate liens on, and pledges of, and made payable from, any other revenues, income, or property, and other, different, or additional source or resources, of the board or the issuer, or any combination of those sources or resources,

except any taxes, all within the sole discretion of and in the manner provided by the board; and the refunding bonds additionally may be secured by mortgages, deeds of trust, trust indentures, trust agreements, or other instruments evidencing liens on any real, personal, or mixed property; and the refunding bonds may be issued in combination with new bonds, and with provision for the subsequent issuance of additional parity bonds, or subordinate lien bonds, under the terms or conditions and with the security, set forth in the proceedings authorizing the issuance of the refunding bonds, all as determined within the discretion of the board; provided, however, that no bonds shall be issued contrary to the provisions of the Texas Constitution. If and when the board desires to issue refunding bonds in combination with new bonds for any purpose or purposes for which the issuer is then authorized by any law or home rule charter provision to issue revenue bonds or other interest bearing obligations, the new bonds may be issued for any purpose or purposes under the provisions of, and be secured and payable as provided in, this Act, and the provisions of this Act shall be fully applicable thereto without regard to any other requirements, in the manner provided by the board in the proceedings authorizing the bonds. All bonds issued under the provisions of this Act may be issued to mature serially or otherwise in not to exceed 50 years from their date, and may be issued to bear interest at any rate or rates, all within the discretion of the board. The bonds and any interest coupons appurtenant thereto, are negotiable instruments within the meaning of the Uniform Commercial Code, except that the bonds and the interest thereon may be made payable to a named payee or made registrable as to principal alone or as to both principal and interest, and may be payable at any place or places, and may be made redeemable prior to maturity, may provide for capitalized interest during construction and thereafter, capitalized operating and maintenance expenses, and capitalized reserve and contingency funds, and may be issued in the form, denominations, and manner, and under the terms, conditions, and details, and may be executed, as provided by the board in the proceedings authorizing the issuance of the bonds. The board may provide and covenant for the conversion of any form of bond into any other form or forms of bond, and for reconversion of bonds into any other form. The board may provide procedures for the replacement of lost, stolen, destroyed, or mutilated bonds or interest coupons in the manner prescribed by the board in the proceedings authorizing the issuance of the bonds. If the duty of replacement, conversion, or reconversion of bonds is imposed upon a corporate trustee under a trust agreement or trust indenture, or upon a place of payment (paying agent) for the bonds, the replacement, converted, or reconverted bond need not be

re-approved by the attorney general or reregistered by the comptroller of public accounts as provided in Section 3 of this Act. Otherwise, all replacement, converted, or reconverted bonds must be so approved and registered as provided in Section 3 of this Act, in accordance with the procedures established in the proceedings authorizing the issuance of the bonds. All bonds issued under the provisions of this Act may be issued without any election or referendum in connection with their issuance or the creation of any encumbrance in connection with their issuance.

Approval by Attorney General; Registration; Incontestability

Sec. 3. All bonds permitted to be issued under the provisions of this Act, and the appropriate and applicable proceedings authorizing the issuance, shall be submitted to the attorney general for examination. If he finds that the bonds have been authorized in accordance with this Act, he shall approve them, and then they shall be registered by the comptroller of public accounts; and after the approval and registration, the bonds shall be incontestable in any court, or other forum, for any reason, and shall be valid and binding obligations in accordance with their terms for all purposes.

Bonds as Legal and Authorized Investments

Sec. 4. All bonds issued under the provisions of this Act are investment securities governed by Chapter 8, Uniform Commercial Code, and are legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, and trustees, and for the sinking funds of cities, towns, villages, school districts, and other political subdivisions or public agencies of the state. The bonds also are eligible to secure deposits of any public funds of the state or any political subdivision or public agency of the state, and are lawful and sufficient security for the deposits to the extent of their market value, when accompanied by any unmatured coupons attached to the bonds.

Exchanges

Sec. 5. The refunding bonds authorized by this Act may be issued in exchange for, and upon surrender and cancellation of, any obligations being refunded, and in that case, the comptroller of public accounts shall register the refunding bonds and deliver them to the holder or holders of the obligations being refunded, in accordance with the provisions of the proceedings authorizing the refunding bonds, and any exchange may be made in one or in several installment deliveries. However, instead of issuing the refunding bonds to be exchanged for any obligations being refunded, the board shall be authorized, in its discretion, to issue refunding bonds to be sold for cash in principal amounts necessary to provide all or any part of the money required to pay the principal of and interest on any obligations being

refunded, as they mature and come due, and to provide all or any part of the money required to redeem any obligations being refunded, prior to maturity, on any future date or dates upon which the obligations have been called for such redemption, within the discretion of the board, including principal, any required redemption premium, and the interest to accrue on the obligations to the redemption date or dates, together with an amount sufficient to pay all expenses related to the issuance of the bonds and the expenses of paying the obligations being refunded under this Act; and also to provide any amounts deemed necessary or required by the board to fund or provide for deposits into any debt service reserve funds, interest and sinking funds, or other funds created in the proceedings authorizing the bonds, and to provide amounts to pay interest on all bonds issued under the provisions of this Act for the period prescribed by the board, and to provide any other amounts deemed required by the board. All bonds issued under the provisions of this Act, excepting any exchange refunding bonds, may be sold for cash in the manner, under the procedures, at public or private sale, and at the price or prices, as shall be determined solely within the discretion of the board. If any of the obligations being refunded through the sale of refunding bonds under this Act are subject to redemption prior to maturity, they may, at the option and within the discretion of the board, be called for redemption on any future date or dates upon which they are redeemable, within the discretion of the board, and the proceedings pertaining to the call shall be submitted to the attorney general along with the proceedings authorizing the issuance of the refunding bonds. When the board has authorized any of the refunding bonds and any new bonds in combination with the refunding bonds to be sold for cash under the provisions of this Act, the refunding bonds and any new bonds in combination with the refunding bonds shall be registered by the comptroller of public accounts after they are approved by the attorney general, without any surrender, exchange, or cancellation of any obligations being refunded.

Deposit of Proceeds with State Treasurer; Duties

Sec. 6. When any refunding bonds issued under the provisions of this Act are sold and delivered to the purchaser, the board immediately shall have deposited with the state treasurer, from the proceeds of the sale, and any other funds available for that purpose, the amount which will be required to pay the principal of and interest on the obligations being refunded as they mature and come due, and the amount which will be required to redeem prior to maturity any obligations being refunded, on the date or dates upon which these obligations have been called for redemption, including principal, any required redemption premium, and the interest to ac-

crue on those obligations to the redemption date or dates, together with an additional amount to pay the state treasurer for his services and to reimburse him for his expenses in performing his duties under this Act, equal to one-twentieth of one percent of the principal or par amount of the obligations being refunded, and one-eighth of one percent of the interest to accrue thereon, but not to exceed a total of \$1,000 in connection with each issue of refunding bonds issued under this Act, plus an additional amount of money sufficient to pay the service charges of the place or places of payment of the obligations for paying and redeeming them. The state treasurer may rely on a certificate or other instrument or document which shall be filed with him by the issuer showing clearly the date or dates upon which the principal matures and interest comes due on the obligations being refunded, and the amounts thereof, and the date or dates, if any, on which the obligations have been called for redemption prior to maturity, together with the redemption price, and the place or places of payment of the obligations being refunded, and the charges to be made by the place or places of payment for paying and redeeming the obligations. It shall be the duty of the state treasurer to make the appropriate required part of the deposits available at the place or places of payment, in current and immediately available funds, on or before, but not later than, each maturity date, due date, or redemption date, respectively, of the obligations being refunded, in order to pay the required amounts on each date, plus the service charges of the place or places of payment.

Investment of Proceeds

Sec. 7. It is provided, however, that instead of depositing money with the state treasurer as required by Section 6 of this Act, except for the money to be paid to him for his services and expenses, which in all events shall be deposited in cash, the board may, at its option, unless the board determines, in its sole discretion, that money is required to be deposited, immediately invest all or any part of the proceeds from the sale of the refunding bonds, and any other necessary available funds, in direct obligations of the United States of America, or in obligations the payment of the principal of and interest on which are unconditionally guaranteed by the United States of America, or in obligations which, in the opinion of the Attorney General of the United States of America, are general obligations of the United States of America and backed by its full faith and credit, which investments will mature, and bear interest payable, at such times and in such amounts as will provide, without any reinvestment, not less than the amount of money, in addition to any money initially deposited for that purpose, required for the payment of the principal of and interest on the obligations being refunded, as they

mature and come due, and for the payment of the redemption price of any obligations being refunded and redeemed prior to maturity, on the date or dates on which the obligations being refunded have been called for redemption, including principal, any required redemption premium, and the interest to accrue on the obligations to the redemption date or dates, together with the additional amount required to pay the service charges of the place or places of payment of the obligations for paying and redeeming them. The board shall deposit all of the investments immediately with the state treasurer. In calculating the amount of the investments required to be so deposited, the issuer and the state treasurer shall rely on receiving both the principal and interest, if any, scheduled to mature and accrue or come due on the investments, to the extent that the principal and interest are scheduled to mature and accrue or come due prior to the date or dates of the maturities, due dates, or redemption date or dates, respectively, of the obligations being refunded; and the amount which otherwise would be required to be deposited, if no interest or increase were scheduled to accrue or come due, may, at the option of the board, be reduced accordingly. It shall be the duty of the state treasurer to accept the deposits of investments and to collect promptly, when due and payable, all principal of and interest on the investments, but he shall not reinvest them. It is further provided that the aforesaid investments shall be made in a manner that the proceeds from them, without any reinvestment, will be available for deposit, and shall be deposited, by the state treasurer, in the place or places of payment, in current and immediately available funds, in the required amounts, on or before, and not later than, each maturity date, due date, or redemption date, respectively, of the obligations being refunded.

Duties of Treasurer as to Handling and Safekeeping of Proceeds

Sec. 8. It shall be the duty of the state treasurer, ex officio, in his official capacity of public office, to accept and keep safely all deposits of money and investments made under this Act, and all proceeds from said investments; but no part of such deposits of money and investments, or proceeds therefrom, excepting the amount paid to him for his services and expenses, shall constitute a part of the state treasury, or be used by or for the state or for the benefit of any creditor of the state, and shall not be commingled with the general revenue fund of the state or any other special funds or accounts held by the state treasurer. The state treasurer shall keep and maintain each such deposit of money and investments, and proceeds from them, excepting the amount paid to him for his services and expenses, separate and apart from all other deposits, money, funds, accounts, and investments, and each such deposit of money and investments, and proceeds

from them, shall be kept and held in escrow and in trust by the state treasurer, for and on behalf of, and charged with an irrevocable first lien and pledge in favor of, the holders of the obligations to be paid the deposits, and the deposits of money and investments, and proceeds from them, shall be used only for the purposes provided in this Act. Each deposit of money and investments, and proceeds from them shall be public funds, and legal title shall be in the state treasurer, in his official capacity as trustee, until paid out as provided in this Act, but equitable title shall be in the issuer, until paid out. The writ of mandamus and all other legal and equitable remedies shall be available to any bondholder, the issuer, or any other party at interest to require the state treasurer to perform his functions and duties under this Act. The surety bond or bonds given by the state treasurer in connection with the proper performance of his duties of office, excepting any special bonds given to protect funds of the United States shall protect and be construed as protecting all the deposits of money and investments, and proceeds from them. The state treasurer shall not in any way invest or reinvest any money deposited with him or received by him from investments deposited with him under this Act. In the event that any surplus funds should be on hand with the state treasurer in connection with any deposit of money or investments, or proceeds from them, the surplus shall be returned to the issuer.

Place of Payment

Sec. 9. If there is more than one place of payment for any obligations being refunded under this Act, the state treasurer shall make all deposits required under this Act at the place of payment located in the state, if there is one, or if there is more than one place of payment located in the state, or if no place of payment is located in the state, then at the one of the places of payment having the largest capital and surplus. It shall be the statutory duty of the place of payment, and the state treasurer shall instruct it, to make the appropriate financial arrangements so that the necessary required current funds will be available, to the extent necessary, at the other places of payment, to pay or redeem the obligations when due; provided that this section shall not apply in the event the board proceeds under Section 10 of this Act.

Alternative Place of Deposit

Sec. 10. It is further provided, however, that in the alternative to making the deposit of money or investments with the state treasurer in connection with refunding bonds issued and sold under this Act, and notwithstanding any provisions of this Act to the contrary, the board shall have the option of making the deposit of money or investments with any place of payment (paying agent), wherever located, for the obligations being refunded, or, at the

option of the board, with any trustee under any trust indenture, trust agreement, deed of trust, or other instrument, securing the obligations being refunded. In that case the place of payment or trustee shall, to the extent practicable, substantially perform the applicable and pertinent functions and duties provided in this Act for the state treasurer, to the extent appropriate and practical, and the place of payment or trustee shall be substituted for the state treasurer under this Act to the extent appropriate and practical, except as otherwise provided by this section. Such deposits of money and investments shall be held for safekeeping, in escrow, in trust for, and charged with an irrevocable first lien and pledge in favor of, and for the benefit of, the holders of the obligations being refunded, and the issuer and the place of payment or trustee, may execute an appropriate trust or escrow agreement on the terms and conditions, and for the consideration agreeable to the parties to the agreement. The agreement may provide that any deposits of money may be invested in direct obligations of the United States of America, or obligations the payment of principal of and interest on which are unconditionally guaranteed by the United States of America, or obligations which, in the opinion of the Attorney General of the United States of America, are general obligations of the United States of America and backed by its full faith and credit, or may be placed in interest bearing time deposits secured at all times by an equal amount in market value of any of the federal obligations named above. The agreement further shall provide for deposits with the place or places of payment (paying agent or agents) to pay or redeem the obligations being refunded when due, and may provide that at any time the amount of money and investments held in escrow exceeds the amount required for purposes of this Act, the excess shall be transferred and delivered to the issuer, or as directed by the board, to be used for any lawful purpose, including the payment of revenue bonds issued pursuant to this Act or otherwise, all at the option of the board.

Rights of Holders of Obligations

Sec. 11. The holder or holders of any obligations being refunded by any refunding bonds sold pursuant to this Act shall never have the right to demand or receive payment of them prior to the scheduled date or dates of the maturities, due dates, or redemption date or dates, respectively, of the obligations being refunded, and the holder or holders shall not be paid for them prior to the date or dates, unless the board specifically and affirmatively provided for and authorized the earlier payment of the obligations in the proceedings authorizing the refunding bonds.

Discharge and Final Payment or Redemption of Obligations; Subordination to Refunded Obligations

Sec. 12. When the initial deposit of money or investments is made with the state treasurer or with a place of payment (paying agent) or trustee in accordance with this Act for any obligations being refunded under this Act, the deposit shall constitute the making of firm banking and financial arrangements for the discharge and final payment or redemption of the obligations being refunded, and although the obligations being refunded continue to be obligations of the issuer, automatically they become obligations of the issuer secured solely by and payable solely from the deposit and the proceeds from them; and on making the deposit, all previous encumbrances, including all liens, pledges, mortgages, deeds of trust, trust indentures, or trust agreements, existing in connection with the obligations being refunded, whether in connection with revenues, real, personal, and mixed property, or any other source of security or payment, automatically terminate and are finally discharged and released, as a matter of law, and the encumbrances shall be of no further force or effect; and although the obligations being refunded will remain outstanding, they shall be regarded as being outstanding only for the purpose of receiving the funds provided by the issuer for their payment or redemption under this Act, and they shall not be regarded as being outstanding in ascertaining the power of the issuer to issue bonds, or in calculating any limitations in connection therewith, or for any other purpose. It is further provided, however, notwithstanding the foregoing provisions of this section, that the board may, in the alternative to the foregoing provisions of this section, provide in the proceedings authorizing the issuance of the refunding bonds that the refunding bonds are subordinate to the obligations being refunded, but only in the manner and to the extent provided in the authorizing proceedings; and, except for any specific provisions to the contrary in the authorizing proceedings, the foregoing provisions of this section are fully applicable.

Cumulative and Prevailing Effects of Act; Use of Other Laws

Sec. 13. This Act shall be cumulative of all other laws 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 hereby, without reference to any other laws, or home rule charter provisions, or any restrictions or limitations contained therein; and to the extent of any conflict or inconsistency between any provision of this Act and any provision of any other law, including any law passed at the current session of the legislature, or any home rule charter provision, the provisions of this Act shall prevail and control; provided, however, that the board shall have the right to use the provisions of any other laws or home rule charter provisions 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. This Act shall be liberally construed so as to permit the accomplishment of the purposes of this Act. [Acts 1977, 65th Leg., p. 1632, ch. 642, §§ 1 to 13, eff. Aug. 29, 1977.]

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; 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, or whether or not such system is encumbered during any period established by ordinance of the governing body of such city, the management and control of such system may by the terms of the instrument evidencing such encumbrance or by the terms of such ordinance, be placed with the governing body of such city, or may be placed with a board of trustees to be named in such instrument or such ordinance, consisting of not more than five (5) members, one (1) of whom shall be the mayor of such city. The compensation of such trustees shall be fixed by such instrument or such ordinance, 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 or such ordinance. In all matters where such instrument or such ordinance 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; Acts 1977, 65th Leg., p. 803, ch. 298, § 1, eff. May 28, 1977.]

Art. 1118x. Metropolitan Rapid Transit Authorities

Findings

Sec. 1. The legislature finds that:

(a) A dominant part of the state's population is located in its rapidly expanding metropolitan areas which generally cross the boundary lines of local jurisdictions and often extend into two or more counties;

(b) The concentration of population in such areas is accompanied by a corresponding concentration of motor vehicles which are generally powered by internal combustion engines that emit pollutants into the air, which emissions result in increasing dangers to the public health and welfare, including damage to and deterioration of property as well as harm to persons, and hazards to air and ground transportation;

(c) Such concentration of motor vehicles places an undue burden on existing streets, freeways and other traffic ways, resulting in serious vehicular traffic congestion that retards mobility of persons and property and adversely affects the health and welfare of the citizens and the economic life of the areas;

(d) The proliferation of the use of motor vehicles for passenger transportation in such areas is caused in substantial part by the absence or inefficiency and high cost of mass transit services available to the citizens of such areas, and it is in the public interest to encourage and provide for efficient and economical local mass rapid transit systems in such areas for the benefit and convenience of the people and for the purpose of improving the quality of the ambient air therein and reducing vehicular traffic congestion; and

(e) The inalienable right of all natural persons to use the air for natural purposes does not vest in any person the right to pollute the air by artificial means, but such artificial use is subject to regulation and control by the state.

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, shall, as provided in Subsection (b) of this section, 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 before December 1, 1977, and a place for holding a public hearing on the question of creating an authority. The governing body also shall by ordinance or resolution, after receipt of a petition as provided in Subsection (a) of this section, and may, on its own motion, fix a time and place for holding a public hearing on a proposal to create an authority. The 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, plus any additional territory that is in an adjacent county and is included in the ordinance or resolution.

(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)(1) 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.

(2) In metropolitan areas where the principal city's population exceeds 1,200,000 according to the last preceding federal census or any federal census hereafter, the management, control, and operation of an authority and its properties shall be vested in a board composed of seven members, five of whom shall be appointed by the mayor of the principal city subject to confirmation by the governing body of the principal city, one of whom shall be appointed by the commissioners court of the county of the principal city, and one of whom shall be appointed jointly by the mayors of all incorporated municipalities within the county of the principal city except the principal city. Each member shall serve a term of two years. Upon confirmation, the board's composition shall remain the same except to the extent that it conflicts with the requirements of Section 6B of this Act. Until a confirmation and

tax election are held, the principal city shall fund the board for purposes of research and planning.

(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. The principal city shall pay, from taxes or other funds, the sums for attendance at meetings held before the authority has received any revenues, and shall reimburse members for necessary and reasonable expenses incurred by the members or the board prior to receipt of revenues by the authority, but the authority, after receiving revenues, shall reimburse the principal city of all payments and reimbursements made as provided in this subsection.

(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 each county included in whole or part within the initial territory of the authority of its intention to do so. Within 30 days after receipt of the notice, each commissioners court by order shall create not more than five designated election areas in the unincorporated portion of the appropriate 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 area within the initial territory of the authority.

(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 incorpo-

rated 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 a 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 each 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 Commission 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.

(k) If the continued existence of an authority is not confirmed by election within three years after the effective date of the ordinance creating the authority, the authority ceases to exist on the expiration of the three years.

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 conve-

nient 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 consent 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 located in whole or in part within a 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, except as provided in Subsection (f) of this section.

(c) The commissioners court of a county in which the authority is situated in whole or in part or that is adjacent to a county in which the authority is situated in whole or in part may hold an election in any one or more of the designated election areas, formed for the election by order of the commissioners court, on the question of whether the area in which the election is held shall be annexed to the authority. The boundaries of a designated election area shall coincide, to the extent practicable, with a boundary of a county voting precinct, so that insofar as practicable no county voting precinct is divided. 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, except as provided in Subsection (f) of this section.

(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.

(f) Territory in which an election is held as provided in Subsections (b) or (c) of this section becomes a part of the authority on the 31st day after the election, if the voters approve the addition as provided in Subsections (b) or (c), and unless the board of the authority notifies the appropriate governing body in writing before that date that the addition, because it is not contiguous to the existing authority, would create a fiscal hardship on the authority.

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 not less than 51 percent of the incorporated area of the principal city 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 described in this subsection.

(b) If more than 50 percent but less than 75 percent of the population of the county described in Subsection (a) of this section 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 described in Subsection (a) of this section 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. If the boundaries of the authority at any time include unincorporated areas of a county other than the county described in Subsection (a) of this section, the county judge of the appropriate county is entitled to serve on the appointment board, with powers equal to the other members of the board, as if the unincorporated area of the county were a municipality and the county judge of that county were the mayor of the municipality.

(e) The terms of office of all members of the board appointed after the confirmation and tax election are two years, except that in order to provide staggered terms, the terms of office of one-half of the first members appointed by an appointing agency after the election, if an even number is to be appointed by the agency, and a bare majority of the first members appointed by an agency, if an odd number greater than one is to be appointed by the agency, are one year. In addition, the appointing agency may shorten the initial terms to make the expiration dates coincide with those of the previously existing positions. To be eligible for appointment to the board, a person must be a qualified voter residing within the boundaries of the authority.

(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.

Station or Terminal Complexes

Sec. 6C. (a) The acquisition of any land or any interest in land 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 granted an authority, including without limitation the rights, powers, and authority relating to station or terminal complexes as provided in this section, are declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity for public use and public benefit.

(b) The authority shall have the right, power, and authority to acquire by grant, purchase, gift, devise, lease, or eminent domain proceedings and to own 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, adjacent or accessible to stations and other mass transit facilities, developed or to be developed by the authority, that may be required for or in aid of the development of one or more station or terminal complexes, as part of its mass transit system and may sell, lease, or otherwise transfer the same, or any part thereof, to individuals, corporations, or governmental entities, subject to the restrictions provided in this section.

(c) Any lands or interests in land acquired for a station or terminal complex must be part of or contained within a station or terminal complex designated as part of the system within a comprehensive transit plan approved by resolution of the board. Before a station or terminal complex may be included in the system, the board must find and determine that the proposed station or terminal complex will encourage and provide for efficient and economical mass transit service, will facilitate access to mass transit service and provide other mass transit purposes, will reduce vehicular congestion and air pollution in the metropolitan area, and is reasonably essential to the successful operation of the system. The board may amend its comprehensive transit plan to include other station or terminal complexes upon making these findings.

(d) Any station or terminal complex shall include adequate provisions for the transfer of passengers between the various modes of transportation available to the complex. A complex may include provisions for commercial, residential, recreational, institutional, and industrial facilities, except that no lands or interests in land more than 1,500 feet in distance from the center point of the complex may be acquired for the facilities by eminent domain proceedings, and the board shall designate the center point prior to the commencement of eminent domain proceedings. If a proposed station or terminal complex is to be located within the city limits or extra-territorial jurisdiction of a city or town, the governing body of the city or town must approve the location of the complex as to conformity with the comprehensive or general plan of the city or town by motion, resolution, or ordinance duly adopted.

(e) The authority may sell, lease, or otherwise transfer lands or interests in land acquired within a station or terminal complex, and may enter into contracts with respect to it, in accordance with the comprehensive transit plan approved by the board, subject to such covenants, conditions, and restrictions, including covenants running with the land and obligations to commence construction within a specified time, as the board may deem to be in the public interest or necessary to carry out the purposes of this section, all of which shall be incorporated into the instrument transferring or conveying title or right of use. Any lease, sale, or transfer shall be at fair value, taking into account the use designated for the land in the comprehensive transit plan for the system and the restrictions on, and the covenants, conditions, and obligations assumed by, the purchaser, lessee, or transferee. However, if the authority offers the property for sale, the original owner from whom the property was acquired by eminent domain proceedings or through threat of eminent domain proceedings has the first right to repurchase at the price at which it is offered to the public.

(f) No station or mass transit facility may be considered a "station or terminal complex" governed by this section unless it has been designated as such in the comprehensive transit plan pursuant to the specific authority granted by this section.

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 there-

to 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, 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.

Local Sales and Use Tax

Sec. 11B. (A) Subject to approval at a tax election in accordance with this Act, the board of an authority shall be authorized to levy, collect and impose a local sales and use tax for the benefit of the authority, the sales tax portion of which shall not exceed one percent on receipts from the sale at

retail of all taxable items within the authority area which are subject to taxation under the provisions of the Limited Sales, Excise and Use Tax Act,¹ as enacted and as heretofore or hereafter amended. The provisions of this section shall be applicable to the levy, imposition and collection of such tax.

(B) (a) The following words and terms shall have the following respective meanings unless a different meaning clearly appears from the context:

(1) "Authority area" means the geographical limits of the authority.

(2) "Comptroller" means the Comptroller of Public Accounts of Texas.

(3) "Local Sales and Use Tax" means any sales and use tax imposed by a city within the authority area under the Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes).

(b) Every retailer within the authority area shall add the tax imposed by the Limited Sales, Excise and Use Tax Act, any applicable Local Sales and Use Tax and the tax imposed under the authority of this Act to his sale price, and when added, the combined tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price. The combined taxes on the transaction shall be determined by multiplying the amount of the sale by the total of the combined applicable tax rates. Any fraction of one cent which is less than one-half of one cent of tax shall not be collected. Any fraction of one cent of tax equal to one-half of one cent or more shall be collected by the retailer as a whole cent of tax. Provided, however, that any retailer who can establish to the satisfaction of the comptroller that 50 percent or more of his receipts from the sale of taxable items arise from individual transactions where the total sales price when multiplied by the combined rates of the taxes imposed under the Limited Sales, Excise and Use Tax Act, any applicable Local Sales and Use Tax, and this section equals an amount that is less than one-half of one cent may exclude the receipts from such sales when reporting and paying the tax imposed under this Act, the Limited Sales, Excise and Use Tax Act, and any applicable Local Sales and Use Tax. No retailer shall avail himself of this provision without prior written approval of the comptroller. The comptroller shall grant such approval when he is satisfied that the retailer qualifies on the basis set forth in this section and when the retailer has submitted satisfactory evidence that he can and will maintain records adequate to substantiate the exclusion herein authorized. Any attempt on the part of any retailer to exercise this provision without prior written approval of the comptroller shall be deemed to be a failure and refusal to pay the taxes imposed

by this Act, the Limited Sales, Excise and Use Tax Act and any applicable Local Sales and Use Tax, and the retailer shall be subject to assessment for both taxes, penalties and interest as provided for in this Act, the Limited Sales, Excise and Use Tax Act, and any applicable Local Sales and Use Tax.

(c)(1) In every authority area where the tax authorized by this Act has been adopted pursuant to the provisions of this Act, there is hereby imposed an excise tax on the storage, use or other consumption within such authority area of taxable items purchased, leased, or rented from any retailer on or after the effective date for collection of the sales tax portion of the sales and use tax for storage, use or other consumption in such authority area at the same rate as the sales tax levied under this Act of the sales price of the taxable item or, in the case of leases or rentals, of said lease or rental price; provided, that if no excise tax on the storage, use or other consumption of any taxable item is owed to or collected by the state under the Limited Sales, Excise and Use Tax Act, then the tax imposed by this section shall not be owed to and shall not be collected by, for or in behalf of such authority for storage or other consumption of such taxable item within such authority area.

(2) In each authority where the tax authorized by this Act has been imposed as provided in this Act, the excise tax imposed under the Limited Sales, Excise and Use Tax Act and any applicable excise tax under the Local Sales and Use Tax Act on the storage, use or other consumption of taxable items and the excise tax imposed by this Act shall be added together to form a combined rate of excise tax which is equal to the sum of the applicable taxes. The tax imposed by this section shall be collected by the comptroller on behalf of and for the benefit of such authority. The formula prescribed in paragraph (b) of this subsection shall be applicable to the collection of the excise tax imposed under this section.

(3) The provisions of Article 20.031, Limited Sales, Excise and Use Tax Act shall be applicable to the collection of the tax imposed by this paragraph (c), provided that the name of the authority where the sales and use tax authorized by this Act has been adopted shall be substituted for that of the state where the words "this state" are used to designate the taxing authority or to delimit the tax imposed; and provided further that the effective date for commencing the collection of the sales tax portion of the tax imposed by this Act in any authority area shall be substituted for the phrase "the effective date of this chapter."

(d)(1) On and after the effective date of any tax imposed under the provisions of this Act, the comptroller shall perform all functions incident to the administration, collection, enforcement and op-

eration of the tax, and the comptroller shall collect, in addition to the taxes imposed by the Limited Sales, Excise and Use Tax Act, an additional tax under the authority of this Act specified by the authority, but not to exceed one percent on the receipts from the sale at retail or on the sale price or lease or rental price on the storage, use or other consumption of all taxable items within such authority area, which items are subject to the Limited Sales, Excise and Use Tax Act. The tax imposed hereunder and the tax imposed under the Limited Sales, Excise and Use Tax Act and any applicable Local Sales and Use Tax shall be collected together and reported upon such forms and under such administrative rules and regulations as may be prescribed by the comptroller not inconsistent with the provisions of this Act. On and after the effective date of any proposition to abolish such Local Sales and Use Tax in any authority area, the comptroller shall comply therewith.

(2) The comptroller shall make to the authority substantially the same reports as to taxes within the authority area as are made to cities under Subsections 5(b), (c) and (d) of the Local Sales and Use Tax Act.

(e) The following provisions shall govern the collection by the comptroller of the tax imposed by this Act:

(1) All applicable provisions contained in the Limited Sales, Excise and Use Tax Act shall apply to the collection of the tax imposed by this Act, except as modified in this Act.

(2) The provisions contained in Section 6 of the Local Sales and Use Tax Act shall apply to the levy, imposition and collection of the tax imposed by this Act except as modified herein.

(3) The penalties provided in the Limited Sales, Excise and Use Tax Act for violations of that Act are hereby made applicable to violations of this Act.

(4) The sales and use tax collected by the comptroller under this Act shall be deposited, held, accounted for and transmitted for the authority as provided in Section 7 of the Local Sales and Use Tax Act.

(f) Each authority's share of all sales and use tax collected under this Act by the comptroller shall be transmitted to the treasurer or the officer performing the functions of such office of such authority by the comptroller payable to the authority periodically as promptly as feasible. Transmittals required under this Act shall be made at least twice in each state fiscal year. Before transmitting such funds, the comptroller shall deduct two percent of the sum collected from each such authority during such period as a charge by the state for its services

specified in this Act, and the amounts so deducted shall be deposited by the comptroller in the State Treasury to the credit of the General Revenue Fund of the state. The comptroller is authorized to retain in the suspense account of any authority a portion of the authority's share of the tax collected under this Act. Such balance so retained in the suspense account shall not exceed five percent of the amount remitted to the authority. The comptroller is authorized to make refunds from the suspense account of any authority for overpayments made to such accounts and to redeem dishonored checks and drafts deposited to the credit of the suspense account of such authority. When any authority shall abolish such tax, the comptroller may retain in the suspense account of such authority for a period of one year five percent of the final remittance to each such authority at the time of termination of collection of such tax in such authority to cover possible refunds for overpayment of the tax and to redeem dishonored checks and drafts deposited to the credit of such accounts. After one year has elapsed after the effective date of abolition of such tax in such authority, the comptroller shall remit the balance in such accounts to the authority and close the account.

(g) The comptroller may promulgate reasonable rules and regulations, not inconsistent with the provisions of this Act, to implement the enforcement, administration and collection of the taxes authorized herein.

(h)(1) In any authority where the sales and use tax authorized by this Act 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 bringing suit for the collection of such delinquent tax and penalty shall be the same as that provided in Article 20.09, Limited Sales, Excise and Use Tax Act. Where any person is delinquent in payment of taxes under this Act, the comptroller shall notify the authority 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 authority, 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 authority. The notice sent by the comptroller to the authority showing the delinquency of a taxpayer 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 sales and use tax set forth in the notice.

(2) Where property is seized by the comptroller under the provisions of any law authorizing seizure of the property of a taxpayer who is delinquent in payment of the tax imposed by the Limited Sales, Excise and Use Tax Act, and where such taxpayer is also delinquent in payment of any tax imposed by this Act, the comptroller shall sell sufficient property to pay the delinquent taxes and penalty due any authority under this Act in addition to that required to pay any amount due the state under the Limited Sales, Excise and Use Tax Act and due any city under the Local Sales and Use Tax Act. The proceeds from such sale shall first be applied to all sums due the state, then all sums due any city under the Local Sales and Use Tax Act, and the remainder, if any, shall be applied to all sums due such authority.

(3) An authority 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 subparagraph (1) of this paragraph and are owed to the authority 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 authority.

(4) The comptroller or attorney general may disapprove the institution of tax suit by an authority 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 authority 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 the Limited Sales, Excise and Use Tax Act 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.

(5) A notice of disapproval to an authority must give the reason for the determination of the comptroller or attorney general. A disapproval is final and not subject to review. An authority,

after one year from the date of the disapproval, may proceed again as provided in subparagraph (3) of this paragraph even though the liability of the taxpayer includes taxes for which the authority has previously given notice and the comptroller or attorney general has previously disapproved the suit.

(6) In any suit under this paragraph for the collection of the authority tax, a judgment for or against the taxpayer does not affect any claim against the taxpayer by a city or the state unless the state is a party to the action.

(7) A copy of the final judgment in favor of an authority in a case in which the state is not a party shall be abstracted by the authority and a copy of the judgment together with a copy of the abstract shall be sent to the comptroller. The authority shall collect taxes awarded to it under the judgment as provided by Subsection (4) of Section (G), Article 20.09, Limited Sales, Excise and Use Tax Act, and is responsible for the renewal of the judgment before the expiration of the 10-year period. If a collection is made by an authority 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 authorities.

¹Taxation—General art. 20.01 et seq.

[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; Acts 1977, 65th Leg., p. 2168, ch. 863, § 1, eff. Aug. 29, 1977.]

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

Article

1146A. Appointment of Health Officer [NEW].

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.]

Art. 1146A. Appointment of Health Officer

If the board of aldermen appoints a city health officer under Article 4425, Revised Civil Statutes of Texas, 1925, as amended, the appointee is not required to be a resident of the city.

[Added by Acts 1977, 65th Leg., p. 891, ch. 335, § 2, eff. May 30, 1977.]

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

Article

1187g. City of Port Arthur; Lake Sabine; Regulation [NEW].

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. If a city ordinance adopted under Section 7 of this Act places management and control of the improvements, facilities, and properties under a board of trustees while revenue bonds and the interest on them remain outstanding or unpaid, the board of trustees, if authorized by Home Rule Charter, may fix charges, authorize expenditures, prepare budgets, and otherwise manage and control the pledged revenues. "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 6]

Outstanding Bonds; Unpaid Interest

Sec. 7. While any revenue bonds issued under the provisions of this Act or any interest thereon remain outstanding and unpaid, the management and control of such improvements and facilities (and the physical properties comprising the same) and of the income and revenue from them, including the authority to fix charges, prepare budgets, and authorize expenditures, by the terms of the ordinance authorizing the issuance of such bonds may be placed in the hands of the governing body of the city or may be placed in the hands of a board of trustees to be named in such ordinance, consisting of not more than seven (7) members, one (1) of whom shall be a member of the governing body of such city; provided, if the city is operating under a Home Rule Charter and said Charter contains provisions requiring that the improvements and facilities be managed or controlled by a board of trustees, then the provisions of such Charter shall be followed. The compensation of the members of the board of trustees, the terms of office of such members, their powers and duties, the manner of exercising the same, the election or appointment of their successors, and all matters pertaining to their organization and duties shall be specified in said ordinance; provided, if the city is operating under a Home Rule Charter as mentioned above and the Charter contains provisions relating to any of the foregoing matters mentioned in this sentence, it is expressly provided that the provisions of such ordinance relating to such matters shall be in accordance with and governed by the Charter provisions. In all matters where such ordinance or Charter are silent, the laws and rules governing the governing body of the city shall govern said board of trustees so far as applicable.

[See Compact Edition, Volume 3 for text of 8 to 12]

[Amended by Acts 1975, 64th Leg., p. 874, ch. 332, § 1, eff. June 6, 1975; Acts 1977, 65th Leg., p. 149, ch. 73, §§ 1, 2, eff. April 25, 1977.]

Art. 1187g. City of Port Arthur; Lake Sabine; Regulation

Sec. 1. The governing body of the City of Port Arthur, with respect to the waters of Lake Sabine within the corporate limits of the city, may designate or otherwise regulate by ordinance certain areas of said lake as bathing, fishing, swimming, recreational; or otherwise restricted areas and may make rules and regulations relating to same.

Sec. 2. Notwithstanding any law or regulation of any state agency permitting the taking of crabs or other sea or water life by the use of traps, the governing body of the City of Port Arthur, with respect to the waters of Lake Sabine within the corporate limits of the city, may designate or otherwise regulate by ordinance the location and placement of traps within said lake.

Sec. 3. The governing body of the City of Port Arthur may, by ordinance, prohibit the depositing or placing of litter, garbage, refuse, or rubbish into or upon the waters of Lake Sabine within the corporate limits of the city.

Sec. 4. The governing body of the City of Port Arthur may, by ordinance, regulate, notwithstanding any other state law or regulation, the speed of boats within and upon Lake Sabine within corporate limits of the city.

Sec. 5. In the event any one or more of the sections or provisions of this Act, or the application of such sections or provisions to any situation, circumstances, or persons, shall for any reason be held to be unconstitutional, such unconstitutionality shall not affect any other sections or provisions of this Act, or the application of such sections or provisions to any situation, circumstances, or persons, and it is intended that this Act shall be construed as if such sections or provisions had not been included herein for any constitutional application.

[Acts 1977, 65th Leg., p. 1788, ch. 716, §§ 1 to 5, eff. Aug. 29, 1977.]

CHAPTER SIXTEEN. MUNICIPAL COURT

GENERAL PROVISIONS

Article

- 1199a. Temporary Replacement [NEW].
- 1200e. Panels or Divisions of Municipal Court; Temporary or Relief Judges [NEW].
- 1200f. Continuing Legal Education of Municipal Court Judges [NEW].

PARTICULAR MUNICIPAL COURTS

- 1200bb. Midland [NEW].
- 1200cc. Cities Over 1,200,000 [NEW].
- 1200dd. Sweetwater [NEW].
- 1200ee. El Paso [NEW].
- 1200ff. Fort Worth [NEW].

GENERAL PROVISIONS

Art. 1196. Judge of the Municipal Court

Such court shall be presided over by a judge to be known as the "judge of the municipal court" and such alternate judges who, in cities, towns or villages incorporated under special charter shall be selected under the provisions of the charter concerning the election or the appointment of the judges to

preside over the municipal court. All such provisions are hereby made applicable to the judges of the municipal court herein provided for. All other statutory references to the "recorder" shall be construed to mean the "judges of the municipal court." [Amended by Acts 1977, 65th Leg., p. 1135, ch. 426, § 2, eff. Aug. 29, 1977.]

Art. 1196(a). Home Rule Cities; Judge of Municipal Court

The Municipal Court in any city heretofore or hereafter incorporated, which city has adopted or amended its Charter, or which may hereafter adopt or amend the same, under Article 11, Section 5, of the Constitution of the State of Texas, commonly known and referred to as the "Home Rule Amendment", shall be presided over by a judge to be known as the "Judge of the Municipal Court", or other title as such official may be called in the charter of any such city, and who shall be selected under the provisions of the City Charter or ordinance concerning the election or appointment of the judge to preside over the Municipal Court.

All judges now holding office and presiding over any such Municipal Court in any such city and heretofore appointed or elected in accordance with the provisions of the Charter or ordinance of such city are hereby declared to be the duly constituted, appointed or elected judge of such Court and shall hold office until his successor shall have been duly selected in accordance with the provisions hereof and shall have qualified according to law.

[Amended by Acts 1977, 65th Leg., p. 1993, ch. 796, § 1, eff. June 16, 1977.]

Sections 3 and 4 of the 1977 Act provided as follows:

"Sec. 3. If any section, subsection, subdivision, paragraph, sentence, clause, phrase, or word of this Act is for any reason held to be invalid or unconstitutional in its application to particular persons or circumstances, 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. 4. This Act shall be cumulative as to all laws, charter provisions, and ordinances relating to the municipal court in home-rule cities in this state."

Art. 1199a. Temporary Replacement

While a municipal judge is temporarily unable to act for any reason, the governing body of the city, town, or village may appoint a person meeting the qualifications 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.

[Added by Acts 1977, 65th Leg., p. 1135, ch. 426, § 1, eff. Aug. 29, 1977.]

Art. 1200e. Panels or Divisions of Municipal Court; Temporary or Relief Judges

(a) In lieu of one judge for the municipal court in a home rule city, as provided in Article 1196(a), Vernon's Texas Civil Statutes, the municipal court in any such city may by charter or ordinance be divided

into two or more panels or divisions, one of which shall be presided over by a presiding judge, and each additional panel or division shall be presided over by an associate judge who shall be a magistrate with the same powers as those conferred on the presiding judge. Each such panel or division of the municipal court, when established, shall have and exercise concurrent jurisdiction with the other panels or divisions of such court within the corporate limits of the city establishing them, and such jurisdiction shall be the same as is now or hereafter may be conferred upon all municipal courts by the general laws of this state. Such panels or divisions of the municipal court may be in concurrent and continuous session, either day or night.

(b) Except as otherwise provided by the charter of such city, the governing body of the city establishing panels or divisions for such court may by ordinance:

(1) prescribe the qualifications of the persons to be eligible to appointment as judge or judges of said court or of its panels or divisions;

(2) provide that such court, its panels or divisions, and the judges thereof may transfer cases from one panel or division to another, and that any judge or any of such panels or divisions may exchange benches and preside over any of the panels or divisions of such court;

(3) provide for a municipal court clerk who shall be clerk for all of the panels or divisions of such municipal court, together with such number of deputies as may be needed. The clerk and the deputies under his direction and supervision shall keep minutes of the proceedings of said court and its panels and divisions, if any, administer oaths, issue all process, and generally perform all the duties of the clerk of a court as prescribed by law for a county clerk insofar as the same may be applicable;

(4) provide that complaints shall be filed with such municipal court clerk in such manner as to provide for an equal distribution among the panels or divisions of such court.

(c) Any such city may provide by charter or ordinance for the appointment of one or more temporary or relief judges to sit for the regular judge of the municipal court or for the presiding judge or any of the associate judges of such court, while such judge or judges, any or all, are temporarily unable to act for any reason. Such temporary or relief judge shall possess the same qualifications required of the judge for whom he is sitting. Any temporary or relief judge shall have all the powers and duties of the judge for whom he is sitting while so acting.

(d) Except as modified by the terms of this Act, the procedure before such court and its panels or divisions, if any, and appeals therefrom shall be governed by the general law applicable to all municipal courts.

[Added by Acts 1977, 65th Leg., p. 1993, ch. 796, § 2, eff. June 16, 1977.]

Sections 3 and 4 of the 1977 Act provided as follows:

"Sec. 3. If any section, subsection, subdivision, paragraph, sentence, clause, phrase, or word of this Act is for any reason held to be invalid or unconstitutional in its application to particular persons or circumstances, 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. 4. This Act shall be cumulative as to all laws, charter provisions, and ordinances relating to the municipal court in home-rule cities in this state."

Art. 1200f. Continuing Legal Education of Municipal Court Judges

Judges not Licensed as Attorneys

Sec. 1. Each municipal court judge in the State of Texas who is not a licensed attorney in this state may complete successfully within one year from the date he is first elected or appointed, or if he is in office on the effective date of this Act, within one year from the effective date of this Act, a 24-hour course in the performance of his duties. Thereafter, he may complete a minimum of eight hours each year. The course may be completed in an accredited state-supported school of higher education or in a continuing education course, program, seminar, or law school or law enforcement school approved by the Texas Judicial Council.

Judges Licensed as Attorneys

Sec. 2. Each municipal court judge in the State of Texas who is a licensed attorney and in good standing with the State Bar may complete successfully within one year from the date he is first elected or appointed, or if he is in office on the effective date of this Act, within one year from the effective date of this Act, an eight-hour course in the performance of his duties. Thereafter, he may complete an eight-hour course each year. The course may be completed in an accredited state-supported school of higher education or in a continuing education course, program, or seminar approved by the Texas Judicial Council.

Administration of Act

Sec. 3. The Texas Judicial Council shall have general supervisory authority over the administration of this Act. The Texas Judicial Council shall accredit courses, programs, and seminars which will satisfy the educational requirements of this Act and shall discover and encourage the offering of the courses, programs, and seminars. The Texas Judicial Council may make and adopt rules and regulations not inconsistent with this Act governing the conduct of business and the performance of its duties.

Written Reports; Waivers or Extensions

Sec. 4. (a) On or before March 15 of each year, each municipal court judge in the state shall make a written report in duplicate to the Texas Judicial Council in the manner and form that the Texas Judicial Council shall prescribe to satisfy the Texas Judicial Council that the judge has completed the minimum number of hours of course work during the preceding or prior calendar year as a student.

(b) In individual cases, the Texas Judicial Council on proper application may grant waivers or extensions of the minimum educational or reporting requirements.

Failure to Meet Requirements

Sec. 5. If an active municipal court judge fails to complete the minimum educational or reporting requirements to the satisfaction of the Texas Judicial Council, the council shall report the failure of the judge to comply to the governor, the attorney general, and the city attorney of the municipality in which the delinquent judge presides.

[Acts 1977, 65th Leg., p. 1122, ch. 418, §§ 1 to 5, eff. Aug. 29, 1977.]

PARTICULAR MUNICIPAL COURTS

Art. 1200aa. Wichita Falls

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

Criminal Jurisdiction; Writs; Terms; Exchange of Benefits

Sec. 2. (a) Municipal courts in Wichita Falls shall have concurrent jurisdiction in all criminal cases arising under the charter and ordinances of the city and shall also have concurrent jurisdiction in all criminal cases arising under the laws of the State of Texas and arising within the territorial limits of the city, in which punishment is by fine only, and where the maximum of such fine may not exceed \$200.

(b) The judge of a municipal court may grant writs of mandamus, injunction, attachment, and all other necessary writs necessary to the enforcement of the jurisdiction of the court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court.

(c) Municipal courts shall hold no terms and may sit at any time for the transaction of the business of the courts.

(d) Where more than one municipal court is established by the governing body of the city, the judges of the municipal courts may, at any time, exchange benches and may, at any time, sit and act for and with each other in any case, matter, or proceeding pending in their courts; and any and all acts thus performed by any of the judges shall be valid and binding upon all parties to such cases, matters, and proceedings.

[See Compact Edition, Volume 3 for text of 3 and 4]

Complaints by City Attorney, Assistant or Deputy

Sec. 5. All proceedings in municipal courts shall be commenced upon original complaint approved for filing by the city attorney of the city, his assistant or deputy, and filed with the court clerk, provided, however, that parking tickets, including red meter tickets, need not be signed by the city attorney, his assistant or deputy, unless a complaint is tried in

court. All such complaints shall be prepared under the direction of the city attorney, his assistant or deputy.

[See Compact Edition, Volume 3 for text of 6 to 8]

Costs

Sec. 9. No court costs shall be assessed or collected by any municipal court in any case tried in the courts, except warrant fees or capias fees as authorized by the Code of Criminal Procedure, 1965, for corporation courts and fees for the Criminal Justice Planning Fund as authorized by Chapter 935, Acts of the 62nd Legislature, Regular Session, 1971 (Article 1083, Code of Criminal Procedure, 1965).

[See Compact Edition, Volume 3 for text of 10 and 11]

Complaint; Form

Sec. 12. Proceedings in municipal courts shall be commenced by complaint which shall begin: "In the name and by authority of the State of Texas"; and shall conclude "Against the peace and dignity of the State." All complaints shall be prepared under the direction of the city attorney, his assistant or deputy, and may be signed by any credible person upon information and belief sworn to before the city attorney, or his assistant or deputy, or the clerk of the court or his deputy, each of whom, for that purpose, shall have power to administer oaths. The complaint shall be in writing and shall state:

(1) The name of the accused, if known, and if unknown, shall describe him as accurately as practicable;

(2) The offense with which he is charged in plain and intelligible words;

(3) It must appear that the place where the offense is charged to have been committed is within the jurisdiction of the municipal court; and

(4) It must show, from the date of the offense stated therein that the offense is not barred by limitations. All pleadings in the municipal courts shall be in writing and filed with the clerk of such courts.

Right to Jury Trial; Selection of Jurors

Sec. 13.

[See Compact Edition, Volume 3 for text of 13(a) and (b)]

(c) In lieu of the preceding method of jury selection, the judges of the municipal courts of Wichita Falls may adopt a plan for the selection of persons for jury service with the aid of mechanical or electronic means. If such a plan is adopted, the laws relating to the selection of petit juries by jury wheel shall not apply. Any such plan so adopted shall conform to the following requirements:

(1) The names taken for jury purposes shall be of registered voters in the City of Wichita Falls.

(2) It shall provide a fair, impartial, and objective method of selecting persons for jury service with the aid of mechanical or electronic equipment.

(3) It shall designate the clerk of the court as the official to be in charge of the selection process and shall define his duties.

(4) It shall specify that a true and complete written list showing the names and addresses of the persons summoned to begin jury services on a particular date shall be filed of record with the clerk of the court at least 10 days prior to the date such persons are to begin jury service.

[See Compact Edition, Volume 3 for text of 14 to 20]

Motion for New Trial; Time; Filing

Sec. 21. A motion for a new trial must be made within 10 days after the rendition of judgment and sentence, and not afterward. Such motion must be in writing and filed with the clerk of the municipal court.

[See Compact Edition, Volume 3 for text of 22 to 34]

Briefs; Filings

Sec. 35. 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 clerk of the appellate court, 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.

[See Compact Edition, Volume 3 for text of 36 to 44]

[Amended by Acts 1977, 65th Leg., p. 1076, ch. 393, §§ 1 to 7, eff. June 15, 1977.]

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 affirmation 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 writ of habeas corpus 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;

(6) where necessary for the proper functioning of the municipal courts, provide for the preservation by microfilm of the records under the custody of county clerks; and

(7) supervise and have control over all of the operations and clerical functions of the administrative section or department of such municipal courts and be responsible for the supervision of all clerical personnel of the administrative department of such municipal court.

(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 proceed-

ings 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. Amended by Acts 1977, 65th Leg., p. 357, ch. 175, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 amendatory act provided: "All acts or charter provisions in conflict herewith are expressly repealed."

Art. 1200dd. Sweetwater

Creation; Formation by Ordinance

Sec. 1. There is created in the city of Sweetwater a court of record to be known as the "City of Sweetwater Municipal Court," to be held in that city if the governing body of the city of Sweetwater, 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 Sweetwater to create a municipal court of record in the city of Sweetwater 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 Sweetwater 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 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 Nolan 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 instantler, 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. 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 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.

Statements 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 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 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 *causis* 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.

Conflicting Laws Conformed

Sec. 23. All laws in conflict or inconsistent with the provisions of this Act are hereby conformed to the provisions of this Act.

[Acts 1977, 65th Leg., p. 1233, ch. 477, §§ 1 to 23, eff. Aug. 29, 1977.]

Art. 1200ee. EL PASO

Establishment of Municipal Courts

Sec. 1. The city of El Paso may, by ordinance legally adopted, provide for the establishment of municipal courts as needed. The judges of the additional courts shall have the same qualifications, and be selected in the same manner, as is provided for the judges of the existing municipal courts in the charter of the city, or as may be provided in any future charter or charter amendment. If the charter of the city requires the election of the judge by vote of the people, the governing body may designate a person as judge of each newly created court until the next regular city election. The courts may be in concurrent or continuous session, either day or night.

Jurisdiction

Sec. 2. Each municipal court shall have and exercise concurrent jurisdiction within the corporate limits of the city, and the jurisdiction shall be the same as is now or may be hereafter conferred on all municipal courts by the general laws of this state.

Administration

Sec. 3. Except as otherwise provided by the charter of the city, the governing body of the city may provide by ordinance:

(1) the qualifications of persons eligible for appointment as judge;

(2) that a judge of any of these courts may transfer cases from one court to any other of these courts and may exchange benches and preside over any other of these courts;

(3) that there shall be a municipal court clerk who is clerk of all of the municipal courts, together with such number of deputies as may be needed; and

(4) that complaints shall be filed with the municipal court clerk in a manner to provide for an equal distribution of cases among the courts.

Procedures

Sec. 4. Except as modified by the terms of this Act, the procedure before the courts and appeals therefrom shall be governed by the general law applicable to all municipal courts.

[Acts 1977, 65th Leg., p. 1748, ch. 697, §§ 1 to 4, eff. Aug. 29, 1977.]

Art. 1200ff. Fort Worth

Creation; Formation by Ordinance; Additional Courts

Sec. 1. There are created municipal courts of record in the city of Fort Worth to be held in that city if the governing body of the city, by legally adopted ordinance, finds and determines that the conditions of the dockets of the other courts of the county are such as to require the formation of such municipal courts in order to properly dispose of the cases arising in the city. The governing body of the city may by ordinance determine the number of municipal courts that are required in order to dispose of the cases arising in the city, in which case the governing body of the city may establish as many municipal courts as it considers necessary, and the ordinance establishing the municipal courts shall designate the municipal courts as Municipal Court No. 1, Municipal Court No. 2, and as each municipal court is established, it shall be designated with the next succeeding number.

Jurisdiction; Writs; Terms; Exchange of Benches

Sec. 2. (a) Municipal courts created under the provisions of this Act shall have concurrent jurisdiction in all criminal cases arising under the charter and ordinances of the city and shall also have concurrent jurisdiction in all criminal cases arising under the laws of the State of Texas and arising within the territorial limits of the city, in which punishment is by fine only and where the maximum of such fine may not exceed \$200.

(b) Municipal courts created under the provisions of this Act shall have concurrent jurisdiction in all civil cases arising within the territorial limits of the city in which the amount in controversy does not exceed \$200, exclusive of costs and interest, and shall have concurrent jurisdiction of a small claims court in all cases arising within the territorial limits of the city.

(c) The judge of a municipal court may grant writs of mandamus, injunction, attachment, and all other necessary writs necessary to 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.

(d) Municipal courts shall hold no terms and may sit at any time for the transaction of the business of the courts.

(e) The judges of the municipal courts may, at any time, exchange benches and may, at any time, sit and act for and with each other in any case, matter, or proceeding pending in their courts, and any and all acts thus performed by any of the judges shall be valid and binding upon all parties to such cases, matters, and proceedings.

Jurisdiction Conformed to this Act

Sec. 3. The jurisdiction of all courts exercising civil or criminal jurisdiction is conformed to the terms and provisions of this Act.

Judges; Qualifications; Election; Compensation; Removal; Vacancies; Disability; Bond and Oath

Sec. 4. (a) Municipal courts shall be presided over by a judge, who shall be known as the "municipal judge," who shall be a licensed attorney in good standing with two or more years of experience in the practice of law in this state and in the county in which the municipal court is located and a citizen of the United States and of this state. He shall be a resident of the city at the time of his election, and he shall maintain his residence within 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 practice of law while in office. He shall be elected for a term of two years at the general municipal election in the same manner as is provided for the election of members of the governing body of the city.

(b) Municipal court judges shall receive a salary which may not be diminished during their terms of office. A municipal court judge may not be removed from office during the term for which he is elected except for cause to the same extent and under the same rules by which judges of the county courts may be removed from office.

(c) A vacancy in the office of municipal judge by death, resignation, or otherwise shall be filled by appointment of a majority of the governing body of the city, provided however, that the person appointed shall serve only until the next following general municipal election, at which his successor shall be elected.

(d) During any period during which a municipal judge is temporarily unable to act for any reason, the mayor of the city, by and with the consent of the governing body of the city, is authorized to appoint some qualified person to act in the place of the municipal judge, and the appointee shall have all the powers and discharge all the duties of the office and shall receive the same compensation as is payable to the regular municipal judge while he is so acting.

(e) Municipal judges shall execute a bond and take the oath of office as required by law relating to county judges.

Pamphlet of Basic Proceedings

Sec. 5. Each municipal judge, or in cities having more than one municipal judge, the municipal judges collectively, shall personally prepare and cause to be printed, both in English and in Spanish, and distributed by the clerk of the court to each defendant in a criminal case and to each party in a civil case before the municipal court, a pamphlet describing in clear and easily understood language the basic proceedings in the municipal court, the method by which judgment of the court may be appealed, and advising that the services of an attorney may be necessary. This Act with no part omitted shall be printed in English and Spanish in each such pamphlet. No fee or charge of any kind may be imposed for obtaining copies of the pamphlet described herein and copies of the pamphlet shall be provided upon request. It shall be the duty of the clerk of the court to have on hand at all times an adequate supply of such pamphlets and to see that they are readily accessible in his office or other nearby place during all hours that the municipal courts transact any business.

Report of Revenues and Activities

Sec. 6. Each municipal court, corporation court, and justice court in the state shall publish during the first week of January and the first week of June of each year in a newspaper of general circulation in the county in which each such court sits a report of its revenues and activities for the six-month period immediately preceding the date of the report and schedule of its established fines payable in cases that are disposed of without hearings. Such report shall be printed in a clear and legible manner in print easily read by a person of average vision, and shall contain the following information in an easily understood form: the amount, stated separately in dollars and cents, of all the fines, fees, costs, and cash bonds received by the clerk of the court during the reporting period, the number of criminal and civil cases filed during the reporting period, the number of cases disposed of, setting out the type of disposition, whether by dismissal, plea of guilt or nolo contendere, or by finding of guilt by the judge sitting without a jury or by jury verdict, the number of cases appealed from the court, and the disposition of such appeals.

Criminal Complaints; Rules Governing Civil Proceedings

Sec. 7. (a) All criminal proceedings in municipal courts shall be commenced upon original complaint filed by the city attorney of the city or his assistant city attorneys. All such complaints shall be prepared under the direction of the city attorney or his assistants.

(b) All civil proceedings in municipal courts shall be commenced and conducted under the Rules of Civil Procedure and the laws pertaining to the conduct of civil actions in the justice courts.

Filing of Original Papers; Minute Book

Sec. 8. The clerk of the municipal courts, under the direction of the municipal judge, shall file the original complaint or petition and the original of all judgments, orders, motions, and all other papers and proceedings filed in the case in a folder for permanent record. The clerk shall maintain also a separate minute book for each court.

Clerk; Duties

Sec. 9. The clerk of the municipal courts shall be appointed by the municipal court judge. It shall be the duty of the clerk or his deputies to keep the records of proceedings of the courts and to issue all processes and generally to do and perform the duties now prescribed by law for clerks of county courts exercising criminal jurisdiction insofar as the same may be applicable. The clerk of the municipal courts shall hold office at the pleasure of the municipal court judge, and shall perform duties under the direction and control of the municipal judges.

Court Reporter

Sec. 10. For the purpose of preserving a record in all cases tried before the municipal courts, the judge of each court shall appoint an official court reporter, who shall be well-skilled in the profession and have the qualifications required of a court reporter in the courts as provided by the general laws of Texas. The reporter shall be a sworn officer of the court and shall hold office at the pleasure of the judge at a salary to be fixed by the governing body of the city. The court reporter is required to take testimony in all cases, civil or criminal, whether the parties request it or not. The judge or judges of the courts may appoint such deputy official court reporters as may be deemed necessary to promptly and efficiently dispose of the business of the courts. The court reporter shall perform duties under the direction and control of the municipal judge or judges.

Costs and Fees

Sec. 11. (a) No court costs shall be assessed or collected by any municipal court in any criminal case tried in the courts, except warrant fees or capias fees as authorized by the Code of Criminal Procedure, 1965, for corporation courts.

(b) In civil cases the court shall assess and collect such costs and fees as are provided for by the Rules of Civil Procedure and general law for the justice courts.

Service of Process

Sec. 12. All processes issuing out of municipal courts may be served by a policeman or warrant

officer of the city or by any peace officer under the same rules as are provided for service by sheriffs and constables of process issuing out of a justice court so far as applicable.

Prosecution by City Attorney; Bailiff

Sec. 13. All prosecutions in municipal courts shall be conducted by the city attorney of the city or his assistants. The chief of police of the city shall, in person or by designated officer or deputy, attend all court proceedings and perform the duties of a bailiff.

Form of Criminal Complaint

Sec. 14. Criminal proceedings in municipal courts shall be commenced by complaint filed by the city attorney, which shall begin: "In the name and by authority of the State of Texas," and shall conclude: "Against the peace and dignity of the state." All complaints shall be prepared under the direction of the city attorney or his assistants, who, for that purpose, shall have power to administer the oath. The complaint shall be in writing and shall state:

- (a) the name of the accused, if known, and if unknown, shall describe him as accurately as practicable;
- (b) the offense with which he is charged in plain and intelligible words;
- (c) facts showing that the place where the offense is charged to have been committed is within the jurisdiction of the municipal court;
- (d) facts showing, from the date of the offense stated therein, that the offense is not barred by limitations. All pleadings in the municipal courts shall be in writing and filed with the clerk of such courts; and
- (e) the specific ordinance or section of the penal code which the defendant has allegedly violated.

Jury Trial; Selection of Jurors

Sec. 15. (a) Every citizen of the appropriate municipality brought before the municipal courts and charged with an offense shall be entitled to be tried by a lawful jury of six persons. The municipal judge shall set certain days of each week or month for the trial of jury cases. Juries for the court shall be selected in the following procedure. On the implementation of this Act by the governing body of the city and between the 1st and 15th days of August of each year thereafter, the tax assessor and collector of the city, or one of his deputies, and the city secretary, or one of his assistants, shall meet together and select, from the list of qualified jurors in the city, the jurors for service in the municipal courts for the ensuing year. The list of jurors shall be taken from the voters registration list of the city. The officers shall place the names of all persons who are known to be qualified jurors under the law

residing in the city on separate cards of uniform size and color, placing also on the cards, whenever possible, the post-office address of each juror so selected. The cards containing the names shall be deposited in a jury wheel to be provided for that purpose by the governing body of the city. The wheel shall be constructed of any durable material, shall be so constructed so as to revolve freely on its axle, and may be equipped with a motor to revolve the wheel so as to thoroughly mix the cards. The wheel shall be locked at all times, except when in use as hereinafter provided, by the use of two separate locks so arranged that the key to one will not open the other lock. The wheel and the clasps into which the locks are fitted shall be arranged so that the wheel cannot be opened unless both of the locks are unlocked. The keys to the locks shall be kept, one by the city secretary and the other by the clerk of the municipal courts. The city secretary and the clerk of the municipal courts shall not open the wheel or permit it to be opened by any person except at the time and in the manner and by the persons herein specified. The city secretary and clerk shall keep the wheel when not in use in a safe and secure place where it cannot be tampered with.

(b) Not less than 10 days before January 1, April 1, July 1, and October 1 of each year, the clerk of the municipal courts or one of his deputies, and the city secretary, or one of his assistants, in the presence and under the direction of one of the municipal judges shall draw from the wheel containing the names of jurors, after the wheel has been turned and the cards thoroughly mixed, one by one the names of jurors to provide the number directed by the judges for each week of the three months next ensuing for which a jury may be required, and shall record the names as they are drawn on a separate sheet of paper for each week for which jurors may be required. At the drawing, no persons other than those above named shall be permitted to be present. The officers attending the drawing shall not divulge to any person the name of any person that may be drawn as a juror. If at any time during the next three months prior to the next drawing date it appears that the list already drawn will be exhausted before the expiration of three months, additional lists for as many additional weeks as the judges may direct will be drawn in the same manner. The several lists of names so drawn shall be certified under the hand of the clerk of the municipal courts, or his deputy doing the drawing, and the municipal judge in whose presence the names were drawn, to be the lists drawn by him for that quarter and shall be sealed up in separate envelopes endorsed "List no. _____ of the petit jurors drawn on the _____ day of _____, 19____, for the Municipal Courts of _____." The clerk doing the drawing shall write his name across the seals of the envelopes and

deliver them to the judge, who shall inspect the envelopes to see that they are properly endorsed and shall then deliver them to the clerk or his deputy, and the clerk shall then immediately file them away in some safe and secure place in his office under lock and key. When the names are drawn for jury service, the cards containing the names shall be sealed in separate envelopes endorsed "Cards containing the names of jurors list no. _____ of the petit jurors drawn on the _____ day of _____, 19____, for the Municipal Courts of _____." Each envelope shall be retained unopened by the clerk until after the jury selected from the corresponding list has been impaneled. After the jurors so impaneled have served four or more days, the envelope containing the cards bearing the names of the jurors on that list shall then be opened by the clerk or his deputy. Those cards bearing the names of persons who have not been impaneled and who have not served as many as four days shall be immediately returned to the wheel by the clerk or his deputy, and the cards bearing the names of the persons serving as many as four days shall be put in a box provided for that purpose for the use of the officers who shall next select the jurors from the wheel. If any of the lists drawn are not used, the clerk or his deputy shall open the envelopes containing the cards bearing the names of the unused lists immediately after the expiration of the three-month period and return the cards to the wheel. A juror serving on a jury in the court shall receive not less than \$10 for each day and for each fraction of a day he attends the court as a juror, and in no event less than that paid in county courts.

(c) Any citizen of the appropriate municipality shall have the right of trial by jury in civil cases in municipal courts which shall be governed by the Rules of Civil Procedure and the laws governing jury trials in the justice courts. The selection of jurors shall be by the same procedures as hereinbefore provided for criminal cases in the municipal courts.

Rules Governing

Sec. 16. Except as modified by the Act, the trial of criminal cases before municipal courts shall be governed by the Code of Criminal Procedure, 1965, applicable to county courts. The trial of civil cases shall be governed by the Rules of Civil Procedure applicable to justice courts, except as modified by this Act.

Bonds

Sec. 17. All bonds taken in proceedings in the courts shall be payable to the State of Texas for the use and benefit of the city.

Judgment and Sentence

Sec. 18. The judgment and sentence, in case of conviction before municipal courts, shall be in the

name of the State of Texas, and shall recover of the defendant the fine and costs for the use and benefit of the state except for actual expenses. Except when otherwise ordered by the court, the court shall require that the defendant remain in custody of the chief of police of such city until the fine and costs are paid and shall order that execution issue to collect the fines and penalties.

Appeals

Sec. 19. Appeals from municipal courts shall be heard by the county courts or county courts at law in the county where the municipal court is located having civil or criminal jurisdiction, according to the nature of the case, except in cases when the county court has no jurisdiction of appeals from justice courts, in which cases the appeals shall be heard by the court having jurisdiction of appeals from justice courts. In no case shall an appeal from a municipal court be heard by a court, the judge of which is not a licensed attorney, and in such event, appeals from the municipal court shall be to a district court in which district the municipal court is located.

Right of Appeal; State

Sec. 20. The state shall have no right of appeal in criminal cases.

Right of Appeal; Motion for New Trial

Sec. 21. Any party, except as otherwise provided herein, shall have the right of appeal from a judgment in a municipal court under the rules herein-after set out, and a motion for a new trial shall be prerequisite to the right of appeal from a municipal court except in those criminal cases in which the defendant was not represented by counsel in the municipal court. In cases in which the defendant was not represented by counsel in the municipal court any oral notice or writing signed by the defendant or upon which the defendant has made his mark and which in ordinary language sets out the reasons why the party wishes to appeal the judgment of the court shall be a prerequisite to the right of appeal if made within the time prescribed for the making of a motion for a new trial. Such a notice shall be acted upon as if it were a motion for a new trial.

Time for Filing Motion for New Trial

Sec. 22. A motion for a new trial must be made within 20 days after the rendition of judgment and sentence and not thereafter. Such motion must be filed with the clerk of the court.

New Trial; State

Sec. 23. In no case shall the state be entitled to a new trial in criminal cases.

Notice of Appeal; Bond

Sec. 24. An appeal may be taken by giving notice of the intent to appeal in open court, which shall

be noted on the docket of the court or embodied in the order overruling the motion for new trial. The notice must be given or filed within 10 days after the order overruling the motion for a new trial is rendered. No particular form or content of such notice shall be required, other than that it shall give reasonably ascertainable notice of the intent to appeal. An appeal bond, not to exceed \$10 in amount, must be filed with the court within 10 days after the order overruling the motion for new trial or its equivalent has been rendered in order for an appeal to be perfected.

Bail on Appeal

Sec. 25. In appeals from the judgments and sentence of a municipal court in a criminal case, the judge may at his discretion require the defendant to give bail in an amount not to exceed the total amount of fines and costs adjudged against him or he may order the defendant released on his personal recognizance pending appeal. Bail shall be payable to the State of Texas and in no event shall the amount of bail required be for a sum in excess of \$200. The bond or personal recognizance shall recite that in the cause the defendant shall make his personal appearance instanter or shall appear by his attorney before the court to which the appeal is taken, 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 and Briefs on Appeal

Sec. 26. In view of the crowded conditions of the dockets of the courts, the record and briefs on appeal in a case appealed from a municipal court shall be limited so far as possible to the questions relied on for reversal.

Record on Appeal

Sec. 27. The city shall provide the record on appeal in a case appealed from a municipal court which shall consist of a transcript, and where necessary to the appeal, a statement of facts.

Contents of Transcript

Sec. 28. The clerk of the municipal courts, under written instructions of the defendant, or his attorney, shall prepare under his hand and seal of the court for transmission to the appellate court and the defendant a true copy of the proceedings in the municipal court, and, unless otherwise designated by agreement of the parties, shall include the following: (1) the complaint upon which the trial was had; (2) the order of the court upon any motions or exceptions; (3) the judgment of the court and the verdict of the jury; (4) any findings of fact or conclusions of law by the court; (5) the judgment of the court; (6) the motion for new trial and the order of the court thereon; (7) any statement of the defendant; (8) any statement as to the matter to be included in the

record; (9) the appeal bond; (10) certified bill of cost; and (11) any signed paper designated as material by the defendant, or his attorney, or the city attorney or his assistant. The defendant, or his attorney, may file with the clerk and deliver or mail to the city attorney or his assistant a copy of the written instruction, and the city attorney or his assistant may file and deliver or mail a written direction to the clerk to include in the transcript additional portions of proceedings in the trial court.

Statement of Facts

Sec. 29. (a) The statement of facts of the testimony of the witnesses need not be in narrative form but may be in question and answer form. The defendant, or his attorney, may prepare and file with the clerk a statement in narrative form of all or part of the testimony and deliver a true copy thereof to the city attorney or his assistant, and if the city attorney or his assistant is dissatisfied with the narrative statement, he may file a motion with the court requesting that testimony in question and answer form to be substituted for all or part thereof.

(b) All matters not essential to the decision or the questions presented in the motion for new trial shall be omitted from a statement of facts. Formal parts of all exhibits and more than one copy of any document appearing in the transcript or the statement of facts may be excluded. All documents may be abridged by omitting or abbreviating a formal portion thereof.

(c) It shall be unnecessary for the statement of facts to be approved by the trial court or judge thereof when agreed to by the defendant, or his attorney, and the city attorney or his assistant.

(d) A written request for a statement of facts shall be made to the court reporter of the municipal court by the defendant or his attorney.

Agreed Statement of Case

Sec. 30. The defendant, or his attorney, and the city attorney, or his assistant, may agree upon a brief statement of the case and upon the facts proven as will enable the appellate court to determine where there is error in the judgment of the trial court. Such statements shall be copied into the transcript in lieu of the proceedings themselves.

Time for Filing Transcript and Statement of Facts

Sec. 31. The transcript and statement of facts shall be filed with the clerk of the municipal courts within 60 days from the date of the order overruling the motion for new trial and shall be promptly forwarded by the clerk of the municipal courts to the clerk of the court to which the appeal is taken.

Time for Filing Briefs

Sec. 32. The appellant shall file his brief with the clerk of the court to which the appeal is taken

within 25 days from the date of the filing of the transcript and statement of facts with the clerk of the appellate court, who shall notify the appellee of the filing. The appellee shall file his brief with the clerk of the appellate court within 15 days after the appellant 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.

Time for Hearing Appeals; Oral Arguments

Sec. 33. The court to which the appeal is taken shall hear and determine appeals from municipal courts at the earliest time it may be done, with due regard to the rights of parties and proper administration of justice. Oral arguments before the court shall be under such rules as the court may determine and the parties may submit the case on the records and briefs without oral argument.

Disposition on Appeal; Opinion

Sec. 34. The court, having jurisdiction of appeals from municipal courts, 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, or may retry the case, as the law and the nature of the case may require. In each case decided by the court having jurisdiction of appeals, the court shall deliver a written opinion either sustaining or overruling each assignment of error presented. If an assignment of error is sustained, the court shall set forth the reasons for such decision. Copies of the decision of the court shall be mailed by the clerk of the court to the parties and the judge of the municipal court as soon as rendered by the court.

Certificate of Appellate Proceedings; Filing of Record; Enforcement of Judgment

Sec. 35. When the judgment of the court having jurisdiction of appeals from municipal courts becomes final, the clerk of the court shall make out a proper certificate of the proceedings had and the judgment rendered and mail the certificate to the clerk of the municipal court from which the appeal was taken. When the record is received by the clerk of the municipal courts, he shall file it with the papers in the case and note it upon the docket of the municipal court. Where the judgment has been affirmed, no proceedings need be had after filing the record in the municipal court to enforce the judgment of the court, except forfeiture of the bond of the defendant, issuance of a *capias* for the defendant, or an execution against his property.

Effect of New Trial Award

Sec. 36. Where the appeal 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 Court of Criminal Appeals

Sec. 37. Appeals to the Court of Criminal Appeals of Texas from the decision of the court having jurisdiction of appeals from municipal courts, when permitted by law, shall be governed by the Code of Criminal Procedure, 1965, except that when an appeal is permitted by law, the transcript, briefs, and statement of facts filed in the court having jurisdiction of appeals from municipal courts shall constitute the transcript, briefs, and statement of facts before the Court of Criminal Appeals of Texas or as the rules of the Court of Criminal Appeals may provide in such cases.

Appeals to Courts of Civil Appeals and Supreme Court

Sec. 38. Appeals to the courts of civil appeals and the supreme court shall be governed by the applicable Rules of Civil Procedure and laws governing the appeal of civil cases from the justice and county courts.

Places and Quarters for Court; Salaries

Sec. 39. (a) The municipal courts shall be held in the city at a place or places within the corporate limits of the city as may be designated by the governing body of the city.

(b) The governing body of the city shall provide suitable quarters for the courts, and all costs of providing courtrooms and office space for the courts, the clerk, and court reporters shall be paid for by the governing body of the city. All salaries paid to the judges, the clerk, court reporters, and employees of the municipal courts shall be paid by the governing body of the city.

Payment and Deposit of Fines, Fees, Costs and Bonds

Sec. 40. All fines, fees, costs, and cash bonds in municipal courts shall be paid to the clerk of the municipal courts. The clerk of the municipal courts shall deposit all fines, fees, costs, and cash bonds directly into the general fund of the city.

Classification of Personnel

Sec. 41. The judges of the municipal courts, the clerk and deputy clerks of the courts, and the court reporters of the municipal courts shall not be considered to be classified employees under civil service, charter, or ordinance provisions. However, the governing body of the city may provide by ordinance that all other employees of the municipal courts may be hired and paid as classified employees under the city civil service, charter, or ordinance provisions. The judges, clerks, deputy clerks, and court reporters may be authorized or required by the governing body of the city to participate in the retirement program of the city. The judges, clerks, deputy clerks, and court reporters of municipal courts shall receive the same vacation, sick leave, and other benefits as are provided for other nonclassified em-

ployees of the city under such regulations as may be provided by the governing body.

[Acts 1977, 65th Leg., p. 1798, ch. 725, §§ 1 to 41, eff. Aug. 29, 1977.]

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 petition 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

1269h-3. Validation of Land Acquisition for County Airport Expansion [NEW].

1269j-4.12. Public Improvement District Assessment Act of 1977 [NEW].

1269j-4.15. Park Purposes; Acquisition and Improvement of Property by Cities of 1,200,000 or More [NEW].

1269l-5. Housing Rehabilitation Act [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. 1269h-3. Validation of Land Acquisition for County Airport Expansion

Sec. 1. Where any county before the effective date of this Act has acquired land for the expansion of a county airport established under Chapter 83, Acts of the 41st Legislature, 1st Called Session, 1929, as amended (Article 1269h, Vernon's Texas Civil Statutes), and the acquisition was by purchase, gift, exchange, or a combination of those methods, the acquisition of the land and all transactions and proceedings related to it are validated in all respects.

Sec. 2. 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 if the litigation ultimately results in a determination that the matter is invalid, nor does it apply to a matter that has been declared invalid by a final judgment of a court of competent jurisdiction.

[Acts 1977, 65th Leg., p. 626, ch. 231, §§ 1, 2, eff. May 24, 1977.]

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 and 3]

Occupancy Tax Authorized

Sec. 3a. Any such city is hereby authorized to levy by ordinance a tax upon the cost of occupancy of any sleeping room furnished by any hotel, where the cost of occupancy is at the rate of \$2 or more per day. Such tax may not exceed four percent of the consideration paid by the occupant of the sleeping room to the hotel.

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

Disposition of Revenue

Sec. 3c. (a) The revenue derived from any occupancy tax authorized or validated by this Act may only be used for:

(1) the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities including, but not limited to, civic center convention buildings, auditoriums, coliseums, civic theaters, museums, and parking areas or facilities for the parking or storage of motor vehicles or other conveyances located at or in the immediate vicinity of the convention center facilities;

(2) the furnishing of facilities, personnel and materials for the registration of convention delegates or registrants;

(3) for advertising for general promotional and tourist advertising of the city and its vicinity and conducting a solicitation and operating program to attract conventions and visitors either by the city or through contracts with persons or organizations selected by the city;

(4) the encouragement, promotion, improvement, and application of the arts, including music (instrumental and vocal), dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, television, radio, tape and sound recording, and the arts related to the presentation, performance, execution, and exhibition of these major art forms;

(5) historical preservation and restoration.

(b) Any city which levies and collects an occupancy tax which is authorized or validated by this Act may pledge a portion of the revenue derived therefrom to the payment of the bonds which the city may issue pursuant to the provisions of Section 3 of this Act, if such bonds are issued solely for one or more of the purposes set forth in the preceding subsection; provided that any city which levies and collects a tax of not more than three percent shall reserve a portion of the tax revenue equal to at least one-half of one percent of the cost of occupancy of hotel rooms, and any city which levies and collects a tax in excess of three percent shall reserve a portion of the tax revenue equal to at least one percent of the cost of the occupancy of hotel rooms for the purpose of advertising and conducting solicitation programs to acquaint potential users with public meeting and convention facilities, and for promotion of tourism and advertising of the city and its vicinity either by the city or through contract with persons or organizations selected by the city.

[See Compact Edition, Volume 3 for text of 3d to 10]

[Amended by Acts 1975, 64th Leg., p. 43, ch. 22, § 1, eff. March 20, 1975; Acts 1977, 65th Leg., p. 41, ch. 25, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 183, ch. 90, § 1, eff. Aug. 29, 1977.]

Art. 1269j-4.12. Public Improvement District Assessment Act of 1977

Title and Applicability

Sec. 1. (a) This Act shall be known as the Public Improvement District Assessment Act of 1977. The powers granted hereunder may be exercised by any incorporated city or town in which the governing body has called and held an election in accordance with the guidelines for holding bond elections under Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended,¹ and at which was submitted, and a majority of the qualified voters voting thereat favorably adopted, the following proposition.

“Shall the governing body of the City of _____ be authorized to exercise the powers granted to cities under the Public Improvement District Assessment Act of 1977.”

(b) In this Act the “city” means any authorized city to which this Act is applicable under Subsection (a) above.

¹ Article 701 et seq.

Authorized Public Improvements

Sec. 2. (a) The governing body of a city may undertake improvement projects that confer a special benefit on a definable part of the city. The governing body may levy and collect special assessments on property in the area, based on the benefit conferred by the improvement project, to pay all or part of its cost.

(b) A public improvement project may include:

- (1) landscaping; the erection of distinctive lighting and signs; the improvement, widening, narrowing, closing, or rerouting of streets or sidewalks; the construction or improvement of pedestrian malls; the establishment or improvement of parks; the erection of fountains; the acquisition and installation of articles of sculpture; and the acquisition, construction, or improvement of off-street parking facilities;
- (2) other improvements similar to those described in Subdivision (1) of this subsection; and
- (3) the acquisition of real property in connection with an authorized improvement.

Act is Alternative

Sec. 3. This Act is a complete alternative to other methods by which a city may finance public improvements by assessing property owners.

Financing Combined Improvements

Sec. 4. An improvement project on two or more streets or two or more types of improvements in, on, or adjacent to the same street or streets may be included in one proceeding and financed as one improvement.

Petition for Improvement

Sec. 5. (a) A petition for any improvement authorized to be financed under this Act may be filed with the city secretary or other officer who performs the function of city secretary. The petition must state:

- (1) the general nature of the proposed improvement;
- (2) the estimated cost of the improvement;
- (3) the boundaries of the proposed assessment district;
- (4) the proposed method of assessment;
- (5) the proposed apportionment of cost between the improvement district and the city as a whole; and
- (6) that the persons signing the petition request the making of the improvement.

(b) The petition is sufficient if signed by:

- (1) at least two-thirds of the owners of record of property liable for assessment under the proposal; or
- (2) the record owners of property composing at least two-thirds of the area liable for assessment under the proposal.

(c) When a petition which meets the requirements of this section is filed, the governing body of the city may make findings by resolution as to the advisability of the improvement, the estimated cost, the method of assessment, and the apportionment of cost between the improvement district and the city as a whole.

Feasibility Report, Etc.

Sec. 6. (a) Before holding a hearing on the advisability of a proposed improvement, the governing body of a city may require that a feasibility report be made to assist in determining whether an improvement should be made as proposed or otherwise or whether it should be made in combination with other improvements authorized by this Act. The governing body may also require that a preliminary estimate of the cost of the improvement or combination of improvements be made. The governing body may use the services of employees of the city to make the report or estimate, or it may employ consultants.

(b) The governing body may also take other preliminary steps prior to the hearing or before ordering an improvement or letting a contract that will be of

assistance in determining the feasibility and desirability of an improvement.

Hearing as to Advisability

Sec. 7. (a) No contract may be let or work ordered or authorized for an improvement financed under this Act unless the governing body of the city first by resolution orders that a public hearing be held on the advisability of the improvement and gives notice of the hearing as required by this section.

(b) Notice of the hearing shall be given by not less than four publications in a newspaper of general circulation in the city. The four publications must be at least a week apart and the final publication must be at least three days before the date of the hearing. The notice shall include the following information:

- (1) the time and place of the hearing;
- (2) the general nature of the proposed improvement;
- (3) the estimated cost of the improvement;
- (4) the boundaries of the proposed assessment district;
- (5) the proposed method of assessment; and
- (6) the proposed apportionment of cost between the improvement district and the city as a whole.

(c) The hearing may be adjourned from time to time until the governing body makes findings by resolution as to the advisability of the improvement, the nature of the improvement, the estimated cost, the boundaries of the improvement district, the method of assessment, and the apportionment of cost between the district and the city as a whole.

(d) The area of the improvement district to be assessed according to the findings of the governing body may be less than the area proposed in the notice of the hearing, but it may not include any property not within the original proposed boundaries unless there is an additional hearing, preceded by the required notice.

May Order Improvements

Sec. 8. (a) At any time within six months after the final adjournment of the hearing on the advisability of an improvement, the governing body of the city by a majority vote of all members may adopt a resolution authorizing the improvement in accordance with its finding as to the advisability of the improvement. The authorization takes effect when it has been published one time in a newspaper of general circulation in the city. Actual construction of the improvement may not begin until 20 days after the authorization takes effect.

(b) An improvement may not be commenced if, within 20 days after the authorization takes effect, written protests signed by at least two-thirds of the owners of record of property within the improvement district or the owners of record of at least two-thirds of the total area of the district are filed with the city secretary or other officer who performs the function of city secretary.

(c) Any person may withdraw his name from a protest at any time before the governing body convenes its meeting to determine the sufficiency of the protest.

Assessment Plan

Sec. 9. (a) The portion of the cost of an improvement to be assessed against the property in the improvement district shall be apportioned by the governing body of the city based on the special benefits accruing to the property because of the improvement.

(b) The cost may be assessed equally per front foot or per square foot against all property within the district; it may be assessed against property according to the value of the property as determined by the governing body of the city, with or without regard to structures or other improvements on the property; or it may be assessed on the basis of any other reasonable assessment plan that results in imposing equal shares of the cost on property similarly benefitted.

(c) The governing body may establish by ordinance reasonable classifications and formulas for the apportionment of the cost between the city and the area to be assessed and the methods of assessing the special benefits for various classes of improvements.

Apportionment of Costs

Sec. 10. (a) An assessment plan must provide that at least 20 percent of the cost of an improvement be paid by special assessments against property in the improvement district.

(b) If any property in the improvement district is exempt from the payment of the special assessment, the assessment that would otherwise be levied against that property shall be paid by the city as a whole. Assessments paid by the city as a whole under this subsection are counted as having been paid by special assessment for the purpose of Subsection (a) of this section.

Preparing Assessment Roll; Notice; Etc.

Sec. 11. (a) When the total cost of an improvement is determined, the governing body shall cause the assessments against each parcel of land within the benefit district to be determined in accordance with the manner of assessment set forth in the resolution as to the advisability of the improvement. The governing body shall also cause a proposed assessment roll to be prepared.

(b) The proposed assessment roll shall be filed with the city secretary or other officer who performs the function of city secretary and be open for public inspection. The governing body shall direct the secretary to publish notice that the governing body will meet to consider the proposed assessments at a public hearing. The notice must be published in a newspaper of general circulation in the city at least 10 days before the hearing and shall state the date, time, and place of the hearing, the general nature of the improvement, the cost of the improvement, the boundaries of the assessment district, and that written or oral objections will be considered at the hearing.

(c) At the time the assessment roll is filed with the city secretary or other officer, the city secretary or other officer shall also mail to the owners of property liable for assessment, at their last known address, a notice of the hearing which contains all the information required of the notice published in a newspaper. The failure of a property owner to receive the notice does not invalidate the proceedings.

Assessments: Hearing, Levy, Payment

Sec. 12. (a) At the hearing on proposed assessments or at any adjournment of the hearing, the governing body shall hear and pass on all objections to each proposed assessment. The governing body may amend the proposed assessments as to any parcel. When all objections have been heard and action has been taken with regard to them, the governing body by ordinance shall levy the assessments as special assessments on the property. The governing body by ordinance shall specify the method of payment of the assessments and may provide that they be payable in not more than 20 equal annual installments.

(b) All assessments bear interest at a rate specified by the governing body, which may not exceed six percent per annum. Interest on the assessment between the effective date of the ordinance levying the assessment and the date the first installment is payable shall be added to the first installment. The interest for one year on all unpaid installments shall be added to each subsequent installment until paid. An assessment or any reassessment is a lien against the property until it is paid. The owner of any property assessed may pay the entire assessment against any lot or parcel with accrued interest to the date of the payment at any time.

Supplemental Assessments

Sec. 13. After notice and hearing in the manner required for original assessments, the governing body may make supplemental assessments to correct omissions or mistakes in the assessment relating to the total cost of the improvement.

Reassessments and New Assessments

Sec. 14. If an assessment against a parcel of land is set aside by a court of competent jurisdiction, found excessive by the governing body, or determined to be invalid by the governing body on the written advice of counsel, the governing body may make a reassessment or new assessment as to the parcel.

Separate Improvement Funds

Sec. 15. A separate improvement fund shall be created in the city treasury for each improvement or combination of improvements. The proceeds from the sale of bonds, temporary notes and time warrants, and any other sums appropriated to the fund by the governing body shall be credited to the fund. The fund may be used solely to pay the costs incurred in the making of the improvement. When the improvement is completed, the balance shall be transferred to the fund established for the retirement of the bonds.

Special Improvement Fund

Sec. 16. (a) A city proposing to make an improvement to be financed under the authority of this Act may establish by ordinance a special improvement fund in the city treasury. The city may levy annually a tax of not to exceed 10 cents on each \$100 valuation of the assessed taxable property of the city for the purpose of the fund.

(b) The fund may be used to pay the costs of planning any improvement authorized by this Act and for preparing preliminary plans, studies, and engineering reports preparatory to the consideration of the feasibility of an improvement and to pay the initial cost of the improvement when ordered by the governing body until temporary notes, time warrants, or improvement bonds have been issued and sold.

(c) The fund shall be reimbursed from the proceeds of the issuance of improvement bonds and shall never exceed one percent of the total assessed property valuation of the city for the preceding year or \$200,000, which ever is less.

(d) The fund need not be budgeted for expenditure during any year, but the amount of the fund shall be stated in the city's annual budget. All grants-in-aid or contributions made to the city for planning and preparation of plans for improvements which are authorized under this Act may be credited to the special improvement fund, and the amount of the aid or contribution shall not be considered in calculating the limitation on the fund imposed by Subsection (c) of this section.

Payment of Costs

Sec. 17. (a) The cost of any improvement made under the authority of this Act shall be paid in accordance with this section.

(b) All costs payable by the city as a whole may be paid from general funds available for the purpose or from other available general improvement funds.

(c) Costs payable by special assessments which have been paid in full shall be paid from those assessments.

(d) Costs payable by special assessments to be paid in installments and costs made payable by the city as a whole but not payable from available general funds or other available general improvement funds shall be paid by the issuance and sale of revenue or general obligation bonds.

(e) During the progress of an improvement the governing body may issue temporary notes or time warrants of the city to pay costs of the improvements and on the completion of the work issue revenue or general obligation bonds.

(f) The costs of more than one improvement may be paid from a single issue and sale of bonds without other consolidation proceedings prior to the bond issue.

General Obligation Bonds

Sec. 18. A city may issue general obligation bonds under the provisions of Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended,¹ to pay all or part of the costs covered by Section 17(d) of this Act.

¹ Article 701 et seq.

Issuance of Revenue Bonds

Sec. 19. For the payment of all or part of the costs covered by Section 17(d) of this Act, the governing body 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 improvements authorized under this Act, including installment payments of special assessments.

Terms and Conditions of Bonds

Sec. 20. (a) Revenue bonds may be issued to mature serially or otherwise within not more than 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 ordinance 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 improvement to be provided through the issuance of the bonds, 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.

Pledges

Sec. 21. (a) The governing body may pledge all or any part of the income from improvements financed under this Act, including the installment payments described in Section 17(d) of this Act, 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 income 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 improvements 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 city and by chattel mortgages, liens, or security interests on any personal property appurtenant to that real property. The governing body may authorize the execution of trust indentures, mortgages, deeds of trust, or other forms of encumbrances to evidence the indebtedness.

(c) The governing body 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. 22. (a) Any revenue 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) General obligation bonds issued under this Act also may be refunded in the manner provided by law.

Approval and Registration of Bonds

Sec. 23. (a) All revenue 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 form for any reason and are valid and binding obligations for all purposes in accordance with their terms.

(b) General obligation bonds issued under this Act shall be approved and registered as provided by law.

Authorized Investments and Security for Deposits

Sec. 24. All bonds issued under this Act are legal and authorized investments for all banks, trust companies, building and loan associations, savings and loans 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.

[Acts 1977, 65th Leg., p. 1205, ch. 467, §§ 1 to 24, eff. Aug. 29, 1977.]

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

1269l-4. Community Development Act of 1975 [NEW].

Art. 1269l-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.

(y) "Comptroller" means the Comptroller of Public Accounts of the State of Texas.

(z) "Captured Market Value" means any amount by which the current market value of property within the boundaries of an urban

renewal project area exceeds its market value at the time such urban renewal project was designated in accordance with the requirements of this Act.

(aa) "Taxable Property" means all real taxable property, but shall not include personal property or intangible property.

(bb) "Tax Assessor-Collector" means the tax assessor-collector of the municipality.

(cc) "Taxing Entity" means any governmental unit, including the State and its political subdivisions, but not including municipalities, authorized by law to levy taxes on property located within an urban renewal project area.

(dd) "Tax Increment" means that amount of property taxes levied and collected each year on property within an urban renewal project area in excess of the amount levied and collected on such property during the year prior to the date of adoption of the urban renewal project plan. A tax increment is calculated by multiplying the total in property taxes levied and collected by the municipality and all other taxing entities on the taxable property within an urban renewal project area in any year by a fraction having a numerator equal to that year's market value of all taxable property in such area minus the tax incremental base and a denominator equal to that year's market value of all taxable property in such area.

(ee) "Tax Incremental Base" means the aggregate market value of all taxable property within an urban renewal project area on the date of approval of the urban renewal project plan in accordance with the requirements of this Act.

(ff) "Tax Increment Fund" means a fund into which all tax increments produced from the captured market value of property located within an urban renewal project area are paid, and from which moneys are disbursed to pay costs with respect to such project or to satisfy claims of holders of tax increment bonds issued with respect to such project.

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]

Approval of Tax Increment Financing

Sec. 5b. A city may not use the tax increment method of financing prescribed by Sections 22a, 22b,

22c, and 22d of this Act unless a majority of the qualified voters of the city voting on the question, who own taxable property within the city that is duly rendered for taxation, approve that method of financing in an election held by the city. At an election held under this section, the ballots shall provide for voting for or against the proposition: "Use of tax increment financing for urban renewal purposes." An election under this section may be held in conjunction with an election held under Section 5 or 5a of this Act. This referendum shall not be necessary if the constitutional amendment on tax increment financing is approved by the voters.

[See Compact Edition, Volume 3 for text of 6]

Preparation and Approval of Urban Renewal Plan

Sec. 7.

[See Compact Edition, Volume 3 for text of 7(a) to 7(h)]

(i) Upon approval of an urban renewal plan by the city and approval of the tax increment method of financing as required under Section 5b of this Act, a fund, to be known as the "Tax-increment Fund" shall be established by the adoption of a resolution by the City Council.

[See Compact Edition, Volume 3 for text of 8]

Powers

Sec. 9. A city shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Act, including the following powers in addition to others herein granted:

(a) To conduct preliminary surveys to determine if the undertakings and carrying out of urban renewal projects is feasible.

(b) To undertake and carry out urban renewal projects within its area of operation.

(c) To make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this Act.

(d) To provide or arrange or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with an urban renewal project; to install, construct and reconstruct streets, utilities, parks, playgrounds, and other public improvements necessary for carrying out urban renewal projects.

(e) To acquire by purchase, lease, option, gift, grant, or bequest, devise, eminent domain or otherwise, any real property (or personal property for its administrative purposes) together with any improvements thereon, necessary or incidental to an urban renewal project; to hold, improve, clear or prepare for redevelopment any such property; to mortgage, pledge, hypothecate or otherwise encumber or dis-

pose of any real property; to insure or provide for the insurance of any real or personal property or operations of the city against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purpose of this Act.

(f) To invest any urban renewal project funds held in reserves or sinking funds or any such funds not required for immediate disbursements, in property or securities in which banks may legally invest funds subject to their control; to redeem such bonds as have been issued pursuant to Section 15 of this Act at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be cancelled.

(g) To borrow money and to apply for and accept advances, loans, grants, contributions and any other form of financial assistance from the Federal Government, the State, County or other public body or from any sources, public or private, for the purposes of this Act, and to give such security as may be required and to enter into and carry out contracts in connection therewith. A city may include in any contract for financial assistance with the Federal Government for an urban renewal project such provisions and conditions imposed pursuant to Federal Law as the city may deem reasonable and appropriate and which are not inconsistent with the purposes of this Act.

(h) Within its area of operation, to make or have made all plans necessary to the carrying out of the purposes of this Act and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify and amend such plans. The city is authorized to develop, test and report methods and techniques and carry out demonstrations and other activities, for the prevention and the elimination of slums and urban blight, and to apply for, accept and utilize grants of funds from the Federal Government for such purposes.

(i) To prepare plans and provide reasonable assistance for the relocation of persons (including families, business concerns, and others) displaced from an urban renewal project area to the extent essential for acquiring possession of and clearing such area or parts thereof to permit the carrying out of the urban renewal project.

(j) To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this Act, and to levy taxes and assessments for such purposes; to close, vacate, plan or replan streets, roads, sidewalks, ways or other places; to plan or replan, zone or rezone any part of the city and to make exceptions from building regulations; and to enter into agreements with an urban renewal agency vested with urban renewal powers under Section 15 of this Act (which agreements may

extend over any period, notwithstanding any provision or rule or law to the contrary), restricting action to be taken by such city pursuant to any of the powers granted by this Act; provided, however, that no taxes or assessments shall be levied under authority or for the purposes of this Act unless and until such levy shall first have been submitted to a vote of the property-owning taxpayers of said city, and said proposition shall have received a majority of the votes cast as being "for" such levy.

(k) Within its area of operation to organize, coordinate and direct the administration of the provisions of this Act as they apply to such city in order that the objective of remedying slum and blighted areas and preventing the causes thereof within such city may be most effectively promoted and achieved, and to establish such new office or offices of the city or to reorganize existing offices in order to carry out such purpose most effectively.

(l) To issue tax increment bonds.

(m) To exercise all or any part or combination of powers herein granted.

[See Compact Edition, Volume 3 for text of 10 to 22]

Computation of Tax Increments

Sec. 22a. (a) For purposes of this Act, the market value of property located within an urban renewal project area shall be determined by the tax assessor-collector, and only the tax assessor-collector, during the time such project exists. Provided, however, that such determination shall require the concurrence of the comptroller; and provided, further, that any property owner aggrieved by a determination of the tax assessor-collector shall have the same right of appeal provided by law to owners of property not affected by this Act.

(b) At the time an urban renewal project is designated by the governing body, the tax assessor-collector shall, with the concurrence of the comptroller, certify to the governing body the market value of property within the boundaries of such district. Property taxable at the time the urban renewal project is designated shall be included at its most recently determined market value; property exempt from taxation at the time the redevelopment district was designated shall be included at zero.

(c) The tax assessor-collector shall, within one year of the time an urban renewal project is designated, and annually thereafter, certify to the governing body the amount of the captured market value of property within the boundaries of the district and the amount of tax increments produced from such captured market value.

(d) For any years in which taxes are to be paid into the tax increment fund required under Subsection (i), Section 7 of this Act, any captured market

value with respect to an urban renewal project shall not be considered by any taxing entity in computing any debt limitation or for any other purpose except in determining the amount to be paid into the tax increment fund.

Allocation of Tax Collections and Tax Increments

Sec. 22b. (a) For purposes of this Act, the tax assessor-collector shall have the sole authority and the duty to collect the taxes levied by the city and all other taxing entities on property located within an urban renewal project and for allocating taxing and tax increments in the manner required by this Act.

(b) Commencing with the first payment of taxes levied by the city or other taxing entities subsequent to the time an urban renewal project is designated, receipts from such taxes shall be allocated and paid over as follows:

(1) There shall first be allocated and paid over in such amounts as belong to each respectively, to the city and to each other taxing entity, all of the property taxes collected which are produced from the tax incremental base.

(2) There shall next be deposited into the tax increment fund established for such project all tax increments produced from the captured market value of property located within the project.

Tax Increment Bonds

Sec. 22c. (a) A city shall, in addition to any other powers vested in it, have the power to issue tax increment bonds, the proceeds of which may be used to pay redevelopment costs with respect to the urban renewal project on behalf of which the bonds were issued or to satisfy claims of holders of such bonds. Upon approval of two-thirds of the resident property taxpayers who are qualified electors of the city, such city shall also have the power to issue refunding bonds for the payment or retirement of tax increment bonds previously issued by it. Such tax increment bonds shall be made payable, as to both principal and interest, solely from tax increments allocated to and paid into the tax increment fund established by the city in accordance with this Act, or from any private sources, or contributions or other financial assistance from the State or United States Government, or by any combination of these methods.

(b) Tax increment bonds issued under this Act, together with interest thereon and income therefrom, shall be exempt from all taxes. The period of maturity of tax increment bonds is limited to a maximum of 20 years from the date of issuance. Bonds issued under this Act shall be authorized by resolution or ordinance of the governing body and

may be issued in one or more series, and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto. Such bonds may be sold at not less than par at public sales held after notice published prior to such sale in a newspaper having a general circulation in the city and in such other medium of publication as the governing body may determine or may be exchanged for other bonds on the basis of par. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this Act shall be fully negotiable. In any suit, action or proceeding involving the validity or enforceability of any bond issued under this Act or the security therefor, any such bond reciting in substance that it has been issued by the city in connection with an urban renewal project, as herein defined, shall be conclusively deemed to have been issued for such purposes and the urban renewal project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of this Act.

(c) All banks, trust companies, bankers, savings banks and institutions, buildings and loan associations, savings and loan associations, investment companies and other persons carrying on a banking or investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any tax increment bonds issued by a city pursuant to this Act. Such bonds shall be authorized security for all public deposits. Any persons, political subdivisions and officers, public or private, are authorized to use any funds owned or controlled by them for the purchase of any such bonds. Nothing in this Act with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

(d) Tax increment bonds shall be payable only out of the tax increment fund created pursuant to Subsection (i), Section 7 of this Act. The City Council may irrevocably pledge all or a part of such fund to the payment of such bonds or notes. Such fund or the designated part thereof may thereafter be used only for the payment of such bonds and interest thereon until the same have been fully paid; and a holder of such bonds or of any coupons appertaining

thereto shall have a lien against such fund for payment of such bonds or notes and interest thereon and may either at law or in equity protect and enforce such lien.

(e) To increase the security and marketability of tax increment bonds, the city may create a lien for the benefit of the bondholders upon any public improvements or public works financed thereby or the revenues therefrom, or make such covenants and do any and all such acts as may be necessary or convenient or desirable in order to additionally secure such bonds or tend to make the bonds more marketable according to the best judgment of the City Council.

(f) Moneys shall be disbursed from the tax increment fund only to satisfy the claims of holders of tax increment bonds issued in aid of the urban renewal project with respect to which the fund was established, or to pay project costs. "Project costs" means any expenditure made or estimated to be made or monetary obligations incurred or estimated to be incurred by the city which are listed in an urban renewal project, plus any costs incidental thereto, diminished by any income or revenues other than tax increments, received or reasonably expected to be received by the city in connection with the implementation of such plan. Such project costs include, but are not limited to:

(1) capital costs, including, but not limited to, the actual costs of the construction of public works or improvements, new buildings, structures, and fixtures; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures; the acquisition of equipment; and the clearing and grading of land;

(2) financing costs, including, but not limited to, all interest paid to holders of tax increment bonds issued to pay for project costs and any premium paid over the principal amount thereof because of the redemption of such obligations prior to maturity;

(3) professional service costs, including, but not limited to, costs incurred for architectural, planning, engineering or legal services;

(4) imputed administrative costs, including, but not limited to, reasonable charges for the time spent by employees of the city in connection with the implementation of an urban renewal plan; or

(5) organizational costs, including, but not limited to, the cost of conducting studies and the cost of informing the public with respect to the creation of urban renewal projects and the implementation of project plans.

(g) Subject to any agreement with the holders of tax increment bonds, moneys in a tax increment

fund may be temporarily invested in the same manner as other municipal funds.

(h) After all project costs and all tax increment bonds issued with respect to an urban renewal project have been paid or the payment thereof provided for, and subject to any agreement with bondholders, if there remain in such fund any moneys, they shall be paid over to the city and other taxing entities levying taxes on property within such project in such amounts as belong to each respectively.

(i) Tax increment bonds issued under this Act shall not be general obligations of the city, nor in any event shall they give rise to a charge against its general credit or taxing powers, or be payable other than as provided by this Act; and any tax increment bonds issued under this Act shall so state on their face.

(j) Tax increment bonds issued under this Act shall not be included in any computation of the debt of the issuing city.

(k) Tax increment bonds may not be issued in an amount exceeding the aggregate costs of implementing the urban renewal plan for the project in aid of which they were issued, and such bonds shall mature over a period not exceeding twenty (20) years from the date thereof.

Annual Report

Sec. 22d. (a) On or before July 1 each year, the City Council shall submit to the chief executive officer of every taxing entity a report on the status of such district. The report shall include the following information:

- (1) the amount and source of revenue in the tax increment fund established in accordance with the requirements of this Act;
- (2) the amount and purpose of expenditures from the fund;
- (3) the amount of principal and interest due on any outstanding bonded indebtedness;
- (4) the tax incremental base and the current captured market value retained by the project; and
- (5) the captured market value shared by the city and other taxing entities, the total in tax increments received, and any additional information necessary to demonstrate compliance with the tax increment financing plan adopted by the City Council.

(b) On or before July 1 of each year, the City Council shall cause to be published in a newspaper of general circulation in the city a statement showing:

- (1) the tax increment received and expended during the previous year;

(2) the original market value and captured market value of all property located within the urban renewal project;

(3) the amount in outstanding indebtedness incurred in aid of the urban renewal project; and

(4) any additional information the City Council deems necessary.

[Amended by Acts 1975, 64th Leg., p. 107, ch. 47, §§ 1 & 2, eff. April 15, 1975; Acts 1977, 65th Leg., p. 2126, ch. 850, §§ 1 to 5, eff. Aug. 29, 1977.]

Section 6 of the 1977 amendatory act provided:

"Except to the extent otherwise specifically provided in this Act, if any provision of this Act or its application to any person or circumstances is held invalid, the invalidity does 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. 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, Regular 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 autho-

rized 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.]

Art. 1269I-5. Housing Rehabilitation Act

Short Title

Section 1. This Act may be cited as the Texas Housing Rehabilitation Act.

Legislative Findings

Sec. 2. The legislature finds that:

(1) a substantial amount of housing in the State of Texas is deteriorating and does not conform to accepted minimum standards applicable to structures for human habitation;

(2) deteriorating housing contributes to the decline of residential areas in urban and rural communities throughout this state, and such housing causes reductions in the taxable values of cities, counties, and other units of local government;

(3) declining residential areas require large-scale public investment to mitigate the effect of slums, health and safety problems, and retard the development of socially and economically disruptive conditions within affected communities;

(4) many owners of deteriorating housing cannot afford to make needed repairs and improvements without expending more than a reasonable portion of their incomes for housing, and some homeowners are financially unable to afford to spend any amount whatsoever to upgrade the quality of their dwellings;

(5) existing programs sponsored by public and private agencies to facilitate the rehabilitation of housing owned by persons of low and moderate income are inadequate to meet current and future needs, and a cooperative state-local government housing rehabilitation program therefore is clearly warranted; and

(6) unless the problem of deteriorating housing and other problems associated with the decline of residential areas are affirmatively addressed by the legislature, the health, safety, and welfare of the residents of such areas, as well as the citizens of the State of Texas generally, will be detrimentally affected.

Policy; Purpose

Sec. 3. It is the policy of the state and the purpose of this Act to provide a means by which the further deterioration of housing and the decline of residential areas in urban and rural communities throughout the State of Texas can be arrested and prevented. The legislature therefore declares that all of the purposes of this Act are public purposes and uses for which public money may be borrowed, expended, and loaned.

Definitions

Sec. 4. In this Act:

(1) "Borrower" means a household whose loan application is approved by a local government.

(2) "Department" means the Texas Department of Community Affairs.

(3) "Direct housing rehabilitation cost" means the amount contracted for between borrowers and contractors in a contract approved by a local government.

(4) "Fund" means the Texas Housing Rehabilitation Loan Fund.

(5) "Household" means a person or persons owning housing in an area designated under this Act.

(6) "Housing" means a structure which is situated on a permanent foundation and which consists of from one to four family units used exclusively for residential purposes.

(7) "Local agency" means a nonprofit organization whose principal purpose is to improve housing conditions or a local housing authority, urban renewal agency, or other public entity.

(8) "Local government" means a county, city, town, or village.

(9) "Rehabilitation" means the repair, renovation, or other improvement of housing with the object of making such housing decent, safe, sanitary, and more habitable.

Housing Rehabilitation Loan Fund

Sec. 5. (a) Funds for the implementation and administration of this Act shall be provided by the General Appropriations Act. A special account in the state treasury, to be known as the Texas Housing Rehabilitation Loan Fund is hereby created. Funds appropriated by the legislature for housing rehabilitation loans, together with any funds received from other sources for the purpose of making loans under this Act, must be placed in the fund. All repayments received from borrowers for loans made from the fund, income from the transfer of interests in property acquired in connection with rehabilitation loans made from the fund, and interest earned on deposits and investments of the fund shall be credited to the fund. It is the intent of this Act that the housing rehabilitation loan fund operate as a revolving fund whereby all appropriations and payments made thereto may be applied and reapplied to the purposes of this Act.

(b) The state treasurer shall invest and disburse money from the fund upon the written authorization of the executive director of the department. The department shall administer the fund as a revolving loan fund for carrying out the purposes of this Act and may designate separate accounts in the fund and the purposes for which the accounts are to be used.

(c) Money in the fund may be used only for:

(1) financing loans made pursuant to this Act, including the administrative charge provided for in Subsection (c) of Section 12 of this Act; and

(2) paying expenses incurred by the department in connection with the acquisition or disposal of real property under this Act.

Area Rehabilitation Plan

Sec. 6. (a) In order to qualify households within its boundaries for rehabilitation loans under this Act, a local government must designate a specific area, or areas, in conformity with standards established by the department, and must prepare an area rehabilitation plan for each designated area in the form prescribed by the department.

(b) An area rehabilitation plan must provide relevant information concerning the area and must include the following elements:

(1) a description of the physical, social, and economic characteristics of the area(s);

(2) a description of housing conditions in the area(s);

(3) an assessment of the need for housing rehabilitation loans in the area(s), such assessment to be expressed in terms of numbers and characteristics of households and average and total loan amounts;

(4) a description of methods by which the local government will determine whether the rehabilitation of housing in the area(s) is economically feasible;

(5) a description of methods by which rehabilitation work will be supervised and methods by which compliance with departmental regulations governing materials, fixtures, and rehabilitation contracts will be ensured;

(6) a description of methods and procedures that will be used to enforce local housing, building, fire, and related codes, or if such codes have not been enacted, a description of methods and procedures for enforcing the standards promulgated by the department;

(7) an assessment of the need for additional public improvements and public services in the area(s), together with a description of the specific means by which these improvements and services will be provided; and

(8) a description of methods by which private investment to improve conditions in the area(s) will be encouraged.

(c) An area rehabilitation plan must be approved by resolution or order of the governing body of the local government and submitted to the department for review. The department shall determine whether the designated area meets the standards established by the department and whether the plan contains all the prescribed elements. If so, the department must accept the plan. Upon acceptance of the plan, households in the designated area are qualified to apply for housing rehabilitation loans. If an area does not meet the department's standards or a plan does not contain all the prescribed elements, the department shall return the plan to the local government with a list of deficiencies. No loans may be made within a designated area unless the deficiencies are corrected and the plan is resubmitted and accepted by the department.

Authority of the Department

Sec. 7. The department has all the powers necessary or appropriate to carry out the purposes of this Act. The department may:

(1) acquire interests in property necessary to and in connection with the making of rehabilitation loans under this Act as set forth in Section 8 of this Act;

(2) make contracts and agreements with the federal government, other agencies of the state, any other public agency, or any other person, association, corporation, local government, or other entity in exercising its powers and performing its duties under this Act;

(3) make regulations governing the disposition or further encumbrance by the borrower of property subject to a lien in connection with a rehabilitation loan;

(4) expend funds appropriated by the legislature to employ staff and for travel, supplies, materials, and equipment or to contract for services necessary to carry out its powers and duties under this Act;

(5) provide technical assistance to local governments; and

(6) seek and accept funding from any public or private source.

Interests in Property; Disposition

Sec. 8. (a) The department may not construct residential housing, nor may the department acquire residential housing except in connection with the enforcement of a lien under this Act, and then only by a foreclosure of a mortgage, a sale under a deed of trust, or by a voluntary conveyance from a borrower in full or partial settlement of a rehabilitation loan.

(b) If the department acquires residential housing in the enforcement of a lien, it must, within six months of such acquisition, offer the housing for public sale or auction. Notice of the public sale or auction must be provided by the department by publication once each week for three consecutive weeks prior to the day of the sale or auction in a newspaper of general circulation in the county in which the housing is located. The notice must contain a description of the property and must specify procedures for submitting competitive bids and the time and location of the public sale or auction. The department may reject any or all bids.

(c) If a sale cannot be effected by public sale or auction, the department may enter negotiations with any party for the expeditious sale of the housing. First priority must be given to selling the housing to a purchaser that will be required to pay ad valorem taxes on the property. If it is not practicable to sell it to such a purchaser, the department shall attempt to sell it to a purchaser that is exempt from ad valorem taxes but will make payments in lieu of taxes on the property. If neither type of purchaser is available, the department may sell it to any purchaser.

Regulations and Standards

Sec. 9. (a) The department shall adopt regulations for making and servicing housing rehabilita-

tion loans, and for the foreclosure of defaulted loans. The regulations must require that each loan be evidenced by a promissory note payable to the state and secured by a valid lien on real property in this state.

(b) The department shall establish:

(1) standards by which households within the boundaries of a local government may qualify for loans;

(2) standards and procedures for the administration of this Act by local governments and local agencies;

(3) standards for the selection of contractors and for contracts between borrowers and contractors performing rehabilitation work under this Act; and

(4) standards for materials and fixtures used in performing rehabilitation work under this Act.

(c) The department shall set minimum and maximum interest rates for loans made under this Act.

(d) The department shall adopt minimum housing, building, fire, and related code standards for application in designated areas for which a rehabilitation plan has been accepted and no such local government standards are in effect.

Administration by Department

Sec. 10. (a) The department shall audit the local administration of rehabilitation loans under this Act to determine if good faith efforts are being made to comply with the applicable area rehabilitation plan and the regulations, standards, and guidelines adopted by the department.

(b) If in any fiscal year anticipated rehabilitation loans exceed estimated available funds, the department shall allocate the estimated available funds for that fiscal year among the local governments that have filed area rehabilitation plans, taking into account the probable amount of rehabilitation loans to be made by each local government.

(c) Upon receipt of notification of approval of a loan application by a local government, the director shall authorize the state treasurer to disburse the approved amount from the fund to the local government unless:

(1) the department has found that the local government is currently not making good faith efforts to substantially comply with the applicable area rehabilitation plan or the regulations, standards, and guidelines adopted by the department; or

(2) the remaining portion of the fund allocated to the local government under Subsection (b) of this section is insufficient to allow payment of the approved amount.

Loan Eligibility

Sec. 11. (a) The department shall establish eligibility guidelines for local governments to use in determining whether households qualify for housing rehabilitation loans under this Act. In establishing these guidelines, the department shall take into account:

(1) household gross income;

(2) household income available for housing needs;

(3) household size;

(4) the value and condition of the housing to be rehabilitated; and

(5) the ability of households to compete successfully in the private housing market and to pay the amounts at which private enterprise is providing sanitary, decent, and safe housing.

(b) The department shall not approve any loan unless it finds that the benefit to an area designated pursuant to the requirements of Section 6 of this Act will exceed the financial commitment of the department and that the approval of the particular loan will be of benefit to the state and its taxpayers.

General Powers and Duties of Local Governments

Sec. 12. (a) A local government may approve or disapprove loan applications from households according to the eligibility guidelines and regulations of the department. Upon approval of a loan application, the local government shall notify the department of the amount of the approved loan.

(b) A local government shall fix the interest rate for each loan within the minimum and maximum rates established by the department and shall fix the term of each loan and any other necessary conditions pertaining to the repayment of the loan pursuant to this Act and the regulations of the department.

(c) A local government may impose an administrative charge of not more than three percent of the direct housing rehabilitation cost and may deduct the charge from the amount loaned to borrowers.

(d) A local government may contract with any public or private entity for servicing rehabilitation loans.

(e) The governing body of a local government may designate a local agency or agencies to carry out any of the powers and duties of the local government under this Act. Any power or duty that a governing body delegates to a local agency may be withdrawn by the governing body at any time.

(f) A local government engaged in housing rehabilitation under this Act shall carry on a program of general education designed to inform residents in designated areas of methods for maintaining their housing and of the availability of housing rehabilitation loans.

Loan Conditions

Sec. 13. (a) Rehabilitation loans must be used primarily to make housing comply with state, county, or municipal building, housing maintenance, fire, health, or similar codes and standards applicable to housing.

(b) No loan made under this Act may exceed an amount which, when added to all other existing indebtedness secured by the property, would exceed the market value of the rehabilitated property as determined by the local government. No loan may exceed the total of the approved direct housing rehabilitation cost together with the administrative charge provided for in Subsection (c) of Section 12 of this Act.

(c) The term of a loan made under this Act may not exceed 20 years. It must be repaid by installments and must be secured as required by this Act and the regulations of the department. The local government may allow deferment of payments or adjust the interest rate or term of the note if the borrower is unable to make the required payments.

(d) A borrower must agree that if he voluntarily destroys, moves, or relinquishes ownership of the rehabilitated housing within one year after completion of the rehabilitation, the loan is immediately due and payable, together with an interest surcharge sufficient to make the total interest paid equivalent to an amount determined by prevailing interest rates for rehabilitation loans from private sources at the time of the sale. If the local government finds that the borrower must sell due to financial hardship or similar circumstances, the interest surcharge may be waived by the local government with the consent of the department.

(e) The department may take title by foreclosure to any project where such acquisition is necessary to protect any loan previously made therefor by the department and to pay all costs arising out of such foreclosure.

Rehabilitation Contracts

Sec. 14. (a) A borrower and contractor may not enter into a contract for rehabilitation work to be financed under this Act unless the proposed contract has first been approved by the local government in accordance with standards established by the department. The local government shall supervise all work performed under the contract. The contractor is not entitled to payment until the work has been approved by the local government, and the borrower is not liable to the contractor for any work not approved by the local government.

(b) Any contract involving the expenditure of more than \$3,000 for housing rehabilitation construction or other work financed by means of loan funds applied by the department may be made only after

advertising in the manner provided by Chapter 163, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes). The provisions of Article 5160, Revised Civil Statutes of Texas, 1925, as amended, relating to performance and payment bonds, shall apply to construction contracts.

Pledge of State Credit Prohibited

Sec. 15. The department shall have no power at any time to borrow money, incur pecuniary obligations, or in any manner to pledge the credit or taxing power of the State of Texas or any of its political subdivisions.

Transfer of Encumbered Property

Sec. 16. Upon sale or gift of the encumbered property, or upon the death of the borrower, the local government may, subject to approval of the department, declare all or part of any deferred payments due and payable, declare the balance of the loan due and payable, or allow the buyer, donee, or other successor in title of the borrower to assume the loan if the buyer, donor, or successor qualifies under the provisions of Section 11 of this Act. [Acts 1977, 65th Leg., p. 2020, ch. 808, §§ 1 to 16, eff. Aug. 29, 1977.]

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 20,000 or more, Educational or Training Incentive Pay

Sec. 8A. (a) In any city in this state having a population of 20,000 or more inhabitants, according 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).

Examination for Eligibility Lists

Sec. 9. The Commission shall make provisions for open, competitive and free examinations for persons making proper application and meeting the requirements as herein prescribed. All eligibility lists for applicants for original positions in the Fire and Police Departments shall be created only as a result of such examinations, and no appointments shall ever be made for any position in such Departments except as a result of such examination, which shall be based on the applicant's knowledge of and qualifications for fire fighting and work in the Fire Department, or for police work and work in the Police Department, as shown by competitive examinations in the presence of all applicants for such position, and shall provide for thorough inquiry into the applicant's general education and mental ability.

An applicant who has served in the armed forces of the United States and who received an honorable discharge shall receive five (5) points in addition to his competitive grades.

Appropriate physical examinations shall be required of all applicants for beginning or promotional positions, and the examinations shall be given by a physician appointed by the Commission and paid by such city; and in the event of rejection by such physician, the applicant may call for further examination by a board of three (3) physicians appointed by the Commission, but at the expense of the applicant, whose findings shall be final. The age and physical requirements shall be set by the Commission in accordance with provisions of this law and shall be the same for all applicants.

No person shall be certified as eligible for a beginning position with a Fire Department who has reached his thirty-sixth birthday. No person shall be certified as eligible for a beginning position with a Police Department who has reached his thirty-sixth birthday unless the applicant has at least five (5) years prior experience as a peace officer. No person shall be certified as eligible for a beginning position with a Police Department who has reached his forty-fifth birthday.

All police officers and firemen coming under this Act must be able to intelligently read and write the English language.

When a fireman or policeman is given a physical examination to determine if he is physically able to continue his duties, the physician will be appointed by the Commission and paid by such city. If the physician determines that he is no longer able to continue his duties, the fireman or policeman may call for further examinations by a board of three (3) physicians appointed by the Commission, but at the expense of the fireman or policeman, whose findings shall be final.

A fireman or policeman who has been certified by a physician selected by a firemen's or policemen's relief or retirement fund as having recovered from a disability for which he has been receiving a monthly disability pension shall, with the approval of the Commission and if otherwise qualified, be eligible for reappointment to the classified position that he held as of the date that he qualified for a monthly disability pension.

[See Compact Edition, Volume 3 for text of 10 to 13]

Promotions; Filling Vacancies

Sec. 14. The Commission shall make rules and regulations governing promotions and shall hold promotional examinations to provide eligibility lists for each classification in the Police and Fire Departments, which examinations shall be held substantially under the following requirements:

A. All promotional examinations shall be open to all policemen and firemen who have ever held a continuous position for two (2) years or more in the

classification immediately below in salary of that classification for which the examination is to be held. In fire and police departments that have adopted a classification plan that classifies positions on the basis of similarity in duties and responsibilities, all promotional examinations shall be open to a fireman or policeman who has ever held a continuous position for two (2) years or more at the next lower pay-grade, if it exists, in the classification for which the promotional examination is being offered. When there is not a sufficient number of members in the next lower position with two (2) years service in that position to provide an adequate number of persons to take the examination, the Commission may extend the examination to the members in the second lower position in salary to that for which the examination is to be held.

[See Compact Edition, Volume 3 for text of 14B and 14C]

D. (1) All applicants shall be given an identical examination in the presence of each other, which promotional examination shall be entirely in writing and no part of which shall be by oral interview, and all of the questions asked therein shall be prepared and composed in such a manner that the grading of the examination papers can be promptly completed immediately after the holding of the examination and shall be prepared so as to test the knowledge of the applicants concerning information and facts, and all of said questions shall be based upon material which has been made available to all members of the Fire or Police Department involved and shall be based upon the duties of the position sought and upon any study courses given by such Departmental Schools of Instruction and upon the applicant's efficiency. When one of the applicants taking an examination for promotion has completed his answers, the grading of such examination shall begin, and all of the examination papers shall be graded as they are completed, at the place where the examination is given and in the presence of any applicants who wish to remain during the grading.

(2) The grade which shall be placed on the eligibility list for each policeman applicant shall be computed by adding such policeman applicant's points for seniority and his credit based on the average of his last two (2) semi-annual efficiency reports to his grade on such written examination. Grades on such written examination shall be based upon a maximum grade of seventy (70) points and shall be determined entirely by the correctness of each applicant's answers to such questions.

(3) The grade which shall be placed on the eligibility list for each fireman applicant shall be computed by adding the fireman applicant's points for seniority to his grade on the written examination. Grades on the written examination shall be based on a maximum grade of one hundred (100) points and

shall be determined entirely by the correctness of each fireman applicant's answers to the questions. The minimum passing score for the written examination is seventy (70) points.

(4) Each applicant shall have the opportunity to examine his examination and his answers thereto together with the grading thereof and if dissatisfied shall, within five (5) days, appeal the same to the Commission for review in accordance with the provisions of this Act.

(5) No person shall be eligible for promotion unless he has served in such Department for at least two (2) years at any time prior to the day of such promotional examination in the next lower position or other positions specified by the Commission, and no person with less than four (4) years actual service in such Department shall be eligible for promotion to the rank of captain. Provided, however, that the requirement of two (2) years service in the Department at any time prior to the day of promotional examination shall not be applicable to those persons recalled on active military duty for a period not to exceed twenty-four (24) months. Such persons shall be entitled to have time spent on active military duty considered as duty in the Department concerned. However, any person whose absence for active military duty exceeds twelve (12) months, shall be required to serve ninety (90) days upon returning to the Department before he shall become eligible to participate in a promotional examination, such period of time to be considered essential for bringing him up to date on equipment and techniques.

(6) No person shall be eligible for appointment as Chief or Head of the Fire or Police Department of any city coming under the provisions of this Act who has not been a bona fide fire fighter in a Fire Department or a bona fide law enforcement officer for (5) years.

Crossover Promotions

Sec. 14A. (a) In any city in this state having a population of 1,200,000 or more inhabitants, according to the last preceding federal census, all members of the police department, who shall be employed by such department with duties in a specialized technical area, to wit: (1) technical class, which includes but is not limited to criminal laboratory analysis and interpretations, and the technical criminal aspects of identification and photography, or (2) communications class, which includes but is not limited to the technical operations of police radio communications, shall be eligible for promotions within their respective classes.

(b) In no event shall the members of the technical class, communications class, or uniformed and detective class be eligible for promotion to a position

outside of their respective class. This section shall be construed so as to preclude the lateral crossover by promotion of members of the technical and communications classes into the uniformed and detective class of the department; also to preclude the lateral crossover by promotion of members of the uniformed and detective class into the technical and communications classes of the department. In the event a member of one class desires to change classes, such may be accomplished upon qualification and only by entry into the new class at the lowest entry level of that class.

(c) This section shall not operate so as to prevent the chief of police, assistant chiefs of police, and deputy chiefs of police or their equivalent, by whatever name or title they may be called, from exercising the full sanctions, powers, duties, and authority of their respective offices in the supervision, management, and control over the uniformed and detective class, technical class, and communications class.

(d) All provisions of this article regarding eligibility lists, examinations, appointments, and promotions shall apply to members of the technical class and communications class, uniform class and detective class. However, said provisions shall apply only to the appointment and promotion of a member of a particular class to a new position within such class.

[See Compact Edition, Volume 3 for text of 15 and 16]

Purpose of Law; Hearings

Sec. 16a. It is hereby declared that the purpose of the Firemen and Policemen's Civil Service Law is to secure to the cities affected thereby efficient Police and Fire Departments, composed of capable personnel, free from political influence, and with permanent tenure of employment as public servants. The members of the Civil Service Commissions are hereby directed to administer the civil service law in accordance with this purpose; and when sitting as a board of appeals for a suspended or aggrieved employee who has invoked any review procedures under the provisions of this Act, they are to conduct such hearing fairly and impartially under the provisions of this law and are to render a fair and just decision, considering only the evidence presented before them in such hearing.

Procedure before Commission

Sec. 17. In order for a Fireman or Policeman to appeal to the Commission from any action for which an appeal or review is provided under the terms of this Act, it shall only be necessary for him to file within ten (10) days with the Commission an appeal setting forth the basis of his appeal, which in the case of an indefinite suspension shall include a state-

ment denying the truth of the charge as made, or a statement taking exception to the legal sufficiency of such charges, and asking for a hearing by the Commission. In all hearings, appeals, and reviews of every kind and character, wherein the Commission is performing an adjudicatory function, the employee shall have the right to be represented by counsel; the witnesses may be placed under the rule. All such proceedings shall be public. The Commission shall have the authority to issue subpoenas and subpoenas duces tecum for the attendance of witnesses and for the production of documentary material. The Commission shall maintain a permanent public record of all proceedings with copies available at cost.

Appeal to District Court

Sec. 18. In the event any Fireman or Policeman is dissatisfied with any 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 the decision be set aside, 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 in such actions may grant such legal or equitable relief as may be appropriate to effectuate the purposes of this Act, including reinstatement or promotion with back pay where an order of suspension, dismissal, or demotion is set aside. 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)]

Termination of Service, Lump Sum Payments: Cities of 1,200,000 or More, Accumulated Sick Leave; Cities of 650,000 or More, Accumulated Vacation Leave

Sec. 26(b). (a) In any city in this State having a population of one million, two hundred thousand (1,200,000) 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; Acts 1977, 65th Leg., p. 134, ch. 63, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 176, ch. 86, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1130, ch. 424, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1140, ch. 431, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2073, ch. 824, § 1, Aug. 29, 1977.]

Acts 1977, 65th Leg., ch. 63, which by § 1 added § 14A to this article, provided in §§ 2 and 3:

"Sec. 2. All prior laws shall be deemed to have been superseded by the provisions hereof and, to the extent that any other law is in conflict with or inconsistent with the provisions hereof, the provisions of this Act shall take precedence and be effective. This section shall apply to each and every section of this Act."

"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."

Acts 1977, 65th Leg., ch. 86, which by § 1 amended § 26(b) of this article, provided in § 2: "This Act shall take effect on August 1, 1977." However, since the Act did not receive the requisite two-thirds record vote in each house, it became effective on August 29, 1977, 90 days after adjournment.

TITLE 29A

COMMISSIONERS ON UNIFORM LAWS

Art. 1273b. Commission on Uniform State Laws

Appointment of Commission

Sec. 1. A Commission is hereby created to be known as the Commission on Uniform State Laws which shall consist of six recognized members of the bar who shall be appointed by the Governor for staggered terms of six years, with the terms of two members expiring on September 30 of each even-numbered year; and in addition thereto, any residents of this state who because of long service in the cause of the uniformity of state legislation shall have been elected life members of the National Conference of Commissioners on Uniform State Laws.

Application of Sunset Act

Sec. 1a. The Commission on Uniform State Laws is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1983.

¹ Article 5429k.

*[See Compact Edition, Volume 3 for text of
2 to 4]*

[Amended by Acts 1977, 65th Leg., p. 341, ch. 168, § 1, eff. May 20, 1977; Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.078, eff. Aug. 29, 1977.]

Section 2 of Acts 1977, 65th Leg., ch. 168, amending § 1 of this article, provided:

"In making the initial appointments following the effective date of this Act, the governor shall designate two members for terms expiring September 30, 1978, two for terms expiring September 30, 1980, and two for terms expiring September 30, 1982."

TITLE 30

COMMISSION MERCHANTS

Art. 1287-3. Regulation of Vegetable Producers, Handlers and Dealers

Definitions

Sec. 1. As used in this Act:

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

(b) "Vegetables" means all produce in fresh form generally considered as perishable vegetables, nuts, or fruits, excluding citrus fruits, whether or not packed in ice or held in cold storage, but does not include those perishable vegetables, nuts, and fruits which have been manufactured into articles of food of a different kind or character. The effects of the following operations may not be considered as changing a commodity into food of a different kind of character: water or steam blanching; shelling; chopping; color adding; curing; cutting; dicing; drying for the removal of surface moisture; fumigating; gassing; heating for necessary control; ripening; coloring; removal of seed, pits, stems, calyx, husks, pods, rinds, skins, peel, etc.; trimming; washing with or without chemicals; waxing; adding of sugar or other sweetening agents; adding ascorbic acids or other agents used to retard oxidation; or mixing of several kinds of sliced, chopped, or diced vegetables, nuts, or fruits for packaging in any type of containers or comparable methods of preparation.

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

(d) "Handle" means buying or offering to buy, selling or offering to sell, or shipping for the purpose of selling, whether as owner, agent, or otherwise, any vegetables grown within the State of Texas. Persons buying or shipping vegetables for canning, processing or handling are defined as handlers.

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

(j) "Commission merchant" shall include "contract dealer" and "dealer" and means any person who purchases vegetables on credit, or who takes vegetables into his possession for consignment or handling on behalf of the producer or owner, or in any manner which does not require nor result in the payment to the producer, seller or consignor of the full purchase price in current money of the United States at the time of delivery to such commission merchant or

when title passes from such producer, seller or consignor to such commission merchant.

[See Compact Edition, Volume 3 for text of 2 to 5]

Produce Recovery Fund and Board

Sec. 6. (a) There is established a special fund with the State Treasurer to be known as the Produce Recovery Fund and to be administered by the Commissioner, without appropriation, for the payment of claims against commission merchants and dealers and for administration of the claims process under both this Act and Chapter 236, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 118b, Vernon's Texas Civil Statutes). No more than ten percent (10%) of the fund may be expended during any one year for administration of the claims process.

(b) There is established the Produce Recovery Fund Board. The board consists of three members appointed by the Governor with the advice and consent of the Senate. One member appointed shall be a producer, one shall be a commission merchant licensed under this Act or Chapter 236, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 118b, Vernon's Texas Civil Statutes), and one shall be a member of the general public. Each member must reside in a different state senatorial district. In making the initial appointments, the Governor shall designate that the term of one member expires in 1979, that one expires in 1981, and that one expires in 1983. Thereafter, members serve for staggered terms of six years. The terms of office for members expire January 31 of odd-numbered years. Members of the board are entitled to per diem and reimbursement for actual expenses incurred while carrying out their duties.

(c) The Produce Recovery Fund Board shall:

(1) advise the Commissioner on all matters pertaining to the Produce Recovery Fund, including the fund's budget and the revenues necessary to accomplish the purposes of the fund;

(2) advise the Commissioner in the promulgation of rules relating to the payment of claims from the fund and to the administration of the fund; and

(3) conduct adjudicative hearings, with a quorum of the board members present, on disputed claims presented for payment from the fund.

(d) All commission merchants, retailers whose annual sales of vegetables and citrus fruit comprise seventy-five percent (75%) or more of the retailer's total sales and whose annual purchases of vegetables and citrus fruit exceed Fifteen Thousand Dollars (\$15,000) a year, and retailers who employ buying agents who buy directly from producers shall, in addition to the license fee herein prescribed, deliver to the Commissioner, together with their application for license, a fee of Two Hundred Dollars (\$200). All retailers whose annual sales of vegetables and citrus fruit comprise seventy-five percent (75%) or more of the retailer's total sales and whose annual purchases of vegetables and citrus fruit are less than Fifteen Thousand Dollars (\$15,000) shall pay a fee of Fifty Dollars (\$50) in addition to the license fee required in Section 5 of this Act. The fee must be paid annually at the time application is made for licensing, and the Commissioner may not issue a license to a person who fails to pay the fee. All fees collected under this Section shall be paid into the Produce Recovery Fund.

(e) A person with whom a commission merchant deals in purchasing, handling, selling, and accounting for sales of vegetables and who is aggrieved by an action of that commission merchant as the result of a violation of terms or conditions of a contract made by that commission merchant may initiate a claim against the Produce Recovery Fund in accordance with the provisions of this Section. The aggrieved party must file with the Commissioner a sworn complaint against the commission merchant and a filing fee of Fifteen Dollars (\$15). The filing fee shall be refunded if the aggrieved party is awarded recovery from the fund. The Commissioner shall conduct an investigation of the complaint and shall determine the amount due the aggrieved party. If the amount determined by the Commissioner is not disputed by the merchant or by the aggrieved party, the Commissioner shall pay the claim, within the limits prescribed in this Section, from the Produce Recovery Fund. If the amount is disputed, the Produce Recovery Fund Board shall conduct a hearing on the claim in the manner provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). After a hearing on the disputed amount, the board shall determine the amount due the aggrieved party and the Commissioner shall pay the aggrieved party that amount, within the limits prescribed in this Section, from the Produce Recovery Fund. A party not satisfied with the decision of the board may appeal that decision in the manner provided under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(f) In making payments from the Produce Recovery Fund, the Commissioner may not pay the aggrieved party more than sixty percent (60%) of any claim for more than One Hundred Dollars (\$100). The total payment of all claims arising from the same transaction may not exceed Ten Thousand Dollars (\$10,000). The total payment of claims against a single commission merchant may not exceed Twenty-five Thousand Dollars (\$25,000) in any one year.

(g) If the Commissioner pays a claim against a commission merchant, the Commissioner is subrogated to all rights of the aggrieved party against that merchant to the extent of the amount paid to the aggrieved party.

(h) If the Commissioner pays a claim against a commission merchant, the merchant must either reimburse the fund immediately or agree in writing to reimburse the fund on a schedule to be determined by rule of the Commissioner. In addition, the commission merchant must either pay the aggrieved party immediately the amount due him or agree in writing to pay the aggrieved party on a schedule to be determined by rule of the Commissioner. The payments made to the fund and to the aggrieved party shall include interest at the rate of eight percent (8%) a year. If the commission merchant does not reimburse the fund or pay the aggrieved party, or does not agree in writing to do so, or defaults on a scheduled payment, the Commissioner shall cancel his license and may not issue a new license to that commission merchant for four years from the date of cancellation. If the merchant is a corporation, no officer or director, and no person owning more than twenty-five percent (25%) of the stock in that corporation, may be licensed as a commission merchant under this Act during the four-year period in which the corporation is ineligible for licensing. An individual or corporation who is ineligible for licensing under this Act is ineligible for licensing as a commission merchant, dealer, or contract dealer under Chapter 236, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 118b, Vernon's Texas Civil Statutes), during the period of ineligibility.

(i) The Commissioner may not pay any claim against a commission merchant who was not licensed at the time of the transaction on which the claim is based and he may not pay any claim against a cash dealer.

(j) Payments from the Produce Recovery Fund during a fiscal year may not exceed the amount of payments into the fund during that fiscal year, except that surplus funds remaining at the end of each fiscal year may be credited to the funds available for the payment of claims during any succeeding year.

(k) With the advice of the Produce Recovery Fund Board, the Commissioner shall promulgate rules, consistent with this Act, for the payment of claims from the Produce Recovery Fund.

Cancellation of License; Complaint; Hearing and Determination

Sec. 7. Any license issued under the provisions of this Act shall remain in full force and effect for a period of twelve (12) months from and after the date of issuance thereof unless said permit shall be cancelled in the manner hereinafter provided and pursuant to the proceedings hereinafter required, to wit: (a) any party aggrieved, injured or damaged by virtue of any violations of the terms and provisions of this Act by any licensee or by the transporting or buying agent of any licensee hereunder, may file with the Commissioner or his duly authorized agent or employee a verified complaint, setting out the specific violations complained of. The complaint must be filed within twelve (12) months from the date of the act that injured the complaining party.

(b) The Commissioner shall set a date not more than ten (10) days from the receipt of such complaint for the hearing thereof; and notify the person complained of, furnishing him with a copy of such complaint, by registered mail to the last known address of such person.

(c) The Commissioner may, at his discretion, recess the hearing provided for in this Section from day to day if in his discretion the ends of justice demand such continuance; for the purpose of said hearings the Commissioner shall have the authority to summon witnesses; to inquire into matters of fact; to administer oaths, and to issue the subpoena duces tecum, for the purpose of obtaining any books, records, instruments, or writing, and other papers pertinent to the investigation at hand.

(d) Upon the conclusion of said hearing and the introduction of all evidence by the respective parties thereto, the Commissioner shall make his decision on the basis of the evidence introduced therein, and shall, if the evidence warrants, issue his order canceling the license of the person complained of.

[See Compact Edition, Volume 3 for text of 8 and 9]

Publication of List of Licenses

Sec. 9a. The Commissioner may publish as often as he considers necessary a list in pamphlet form of all persons licensed under this Act.

[See Compact Edition, Volume 3 for text of 10 and 11]

Expiration and Renewal of License; Identification Cards; Contents; Return

Sec. 12. (a) Any license issued hereunder will authorize the licensee and none other, to engage in the business as a dealer for one year from date of

issuance, at which time said license shall expire and become null and void. Any license issued to applicant under the provisions of this Act, which expired by its own terms, may be renewed upon completion of a renewal application and payment to the Commissioner of Agriculture of the proper license fee as provided for the original issuance thereof. Said license and the identification cards hereinafter provided shall not be assignable and any attempt to assign same shall void such license or identification card. Upon application to the Commissioner by any licensed dealer, a reasonable number of "buying agent" and "transporting agent" identification cards may be issued and credited to such dealer, under such rules and regulations as said Commissioner may prescribe, and said Commissioner is hereby empowered to charge a fee not to exceed One Dollar (\$1) for each card so issued.

[See Compact Edition, Volume 3 for text of 12(b) to 13]

Investigation of Violations; Hearings; Orders

Sec. 14. (a) For the purpose of enforcing the provisions of this Act, the Commissioner shall, either upon his own initiative or upon the receipt of a properly verified complaint, investigate all alleged violations of this Act and for the purpose of making such investigation, he shall have, at all times, free and unimpeded access to all books, records, buildings, yards, warehouses, storage, and transportation and other facilities or places in which any vegetables are kept, stored, handled, processed or transported, and in furtherance of such investigation either the Commissioner in person or through his authorized representatives, may examine any portion of the ledger, books, accounts, memorandum, documents, scales, measures and other matters, objects or persons pertinent to such alleged violation under investigation. The Commissioner shall take such action and hold such public hearing as in his judgment are shown to be necessary after such investigations, and shall take the proper action with reference to the cancellation or suspension of the license of any dealer hereunder shown to have been guilty of a violation of the terms of this Act. Such hearings shall be held in the county where violations are alleged to have occurred. Any order made by the Commissioner with reference to the revocation or cancellation of any license granted under the provisions of this Act, shall be subject to review by a court of competent jurisdiction.

(b) If a person who has received at least 15 days' notice of an order of the Commissioner refuses to comply with that order, the Commissioner may seek temporary or permanent relief to require compliance. The district court has jurisdiction to grant this relief.

[See Compact Edition, Volume 3 for text of 15 to 18]

Offenses and Violations; Fines

Sec. 19. From and after the effective date of this Act any person who shall:

(a) Act as a dealer or handler, or both, without first obtaining a license to act as such dealer or handler, or both;

(b) Act or assume to act as a transporting agent or buying agent, without first obtaining from the Commissioner a license or a buying agent's or transporting agent's card as by the terms and provisions of this Act required, shall be fined not to exceed Five Hundred Dollars (\$500), and each day upon which any dealer, handler, buying agent, or transporting agent, shall act or assume to act in violation of the requirements of this Act shall constitute a separate offense.

(1) Any buying or transporting agent who ceases to be employed by, or the agent of the dealer or handler to whom such buying agent's or transporting agents' cards were issued and who fails and refuses on the termination of such employment to turn over to the Commissioner of Agriculture the buying or transporting agent's cards issued to such persons shall be fined not to exceed Five Hundred Dollars (\$500).

(2) Any person who shall act or assume to act as a commission merchant without first paying to the Commissioner of Agriculture of the State of Texas the fee required in Section 6 of this Act, and obtaining a license to act as such commission merchant shall be fined not to exceed Five Hundred Dollars (\$500), and each day upon which such person shall act or assume to act as such commission merchant shall constitute a separate offense.

(3) Any licensee or any transporting agent or buying agent of any licensee under this Act who shall violate any of the terms and provisions of this Act shall be fined not to exceed Five Hundred Dollars (\$500).

(c) Fifty percent (50%) of all fines collected under this Section shall be deposited in the Produce Recovery Fund. The clerk of the county court or county court-at-law and the custodian of county treasury funds shall keep separate records of all fines collected under this Section. On the first day of each January, April, July, and October, the custodian of funds in the county treasury shall remit this portion of the fines collected to the comptroller of public accounts, and the comptroller shall deposit that amount in the Produce Recovery Fund.

Cash Dealers; License

Sec. 20. Any person who purchases vegetables only from dealers duly qualified as such under this Act, and pays therefor prior to or at the time of delivery or taking possession of such vegetables so purchased, in current money of the United States, shall be exempt from paying the fee provided for in Section 6 of this Act and such person shall indicate on his application for license that he desires to operate as a cash buyer, buying only from dealers duly qualified as such under this Act, in accordance with the provisions of this Section and thereupon such person shall be entitled to a license as a cash dealer, purchasing only from dealers duly qualified under this Act, upon the payment by such applicant of the license fee as required under this Act. Such dealer shall be subject to all the pertinent provisions of this Act. Any violation of this Section shall be deemed a misdemeanor and be punishable, as provided in Section 19 of this Act.

Any producer handling or dealing in his own products exclusively, shall be licensed, upon application, by the Commissioner of Agriculture without charge and without being required to pay the fee required under Section 6 of this Act.

Citrus Fruit Dealers; License Fees

Sec. 21. Any person who comes within any of the classifications set out in Chapter 236, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 118b, Vernon's Texas Civil Statutes), wherein a payment of either Two Hundred Dollars (\$200) or Fifty Dollars (\$50) to the Produce Recovery Fund is required of him, shall be permitted to make only one payment of either Two Hundred and Fifty Dollars (\$250) or Seventy-Five Dollars (\$75) to the fund and shall be liable for only one license fee of Twenty-five Dollars (\$25), and his license shall reflect the fact that he is licensed thereby to handle both citrus fruits and vegetables.

Applicability to Retailer of Vegetables

Sec. 21a. This Act does not apply to a retailer of vegetables except a retailer whose annual sales of vegetables and citrus fruit comprise seventy-five percent (75%) or more of his total sales or who employs a buying agent who buys directly from a producer.

[See Compact Edition, Volume 3 for text of 22 to 24]

[Acts 1977, 65th Leg., p. 1042, ch. 386, §§ 1 to 10, eff. Sept. 1, 1977.]

Sections 20 to 22 of the 1977 amendatory act provide:

"Sec. 20. A bond of a commission merchant, dealer, or contract dealer required under Chapter 218, Acts of the 58th Legislature, 1963, as amended (Article 1287-3, Vernon's Texas Civil Statutes), or under Chapter 236, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 118b, Vernon's Texas Civil Statutes), and issued prior to the effective date of this Act continues in effect until the expiration of the liability provided for in the bonding

contract. After the expiration of the license under which the commission merchant, dealer, or contract dealer is operating on the effective date of this Act, that merchant or dealer must pay the required fee to the Produce Recovery Fund in order to be licensed."

"Sec. 21. Notwithstanding any other provision of law, for the first fiscal year that this Act is in effect all license fees collected under the provisions of

Chapter 218, Acts of the 58th Legislature, 1963, as amended (Article 1287-3, Vernon's Texas Civil Statutes), or of Chapter 236, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 118b, Vernon's Texas Civil Statutes), shall be deposited in the Produce Recovery Fund. Thereafter, license fees shall be deposited as provided for in those acts."

"Sec. 22. This Act takes effect September 1, 1977."

TITLE 31

CONVEYANCES

Article

1293b. Attorney's Fees in Breach of Restrictive Covenant Actions
[NEW].

Art. 1293b. Attorney's Fees in Breach of Restrictive Covenant Actions

(a) In an action based on breach of a restrictive covenant pertaining to real property, the court shall allow a prevailing party who asserted the action for breach of a restrictive covenant, reasonable attorney's fees, in addition to his costs and claim.

(b) To determine reasonable attorney's fees, the court shall consider:

(1) the time and labor required;

(2) the novelty and difficulty of the questions;

(3) the expertise, reputation, and ability of the attorney; and

(4) any other factor.

[Acts 1977, 65th Leg., p. 2167, ch. 862, § 1, eff. Aug. 29, 1977.]

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 the 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.]

¹ Article 701 et seq.

CHAPTER SEVEN. COUNTY HOME RULE

Art. 1606c. Office of County Fire Marshal

[See *Compact Edition, Volume 3 for text of 1 to 6*]

Right of Entry; Investigation of Dangerous Conditions; Order

Sec. 7. He shall have the authority to enter and examine any and all buildings or structures where a fire has occurred, in the performance of his duties of office, day or night, and examine any adjacent buildings or premises, but this authority shall be exercised with reason and discretion and with a minimum burden upon the persons living in said buildings. It shall be his duty when called upon, or when he has reason to believe that it is in the interest of safety and fire-prevention, to enter any premises

and inspect the same, and if he find that because of inflammable substance being present, dangerous or dilapidated walls, ceilings or other parts of the structure existing, improper lighting, heating or other facilities being used that endanger life, health or safety, or if because of chimneys, wiring, flues, pipes, mains or stoves, or any substance he shall find stored in any building, he believes that the safety of said building or that of its occupants is endangered and that it will likely promote or cause fire or combustion, he shall be empowered to order the said situation rectified forthwith and the owner or occupant of the said structure shall comply with the orders of the said County Fire Marshal or shall be adjudged guilty of contempt of said order and of a Class B misdemeanor; and each recurring refusal to so rectify such conditions shall be deemed as a separate offense and violation of such order.

[See *Compact Edition, Volume 3 for text of 8 and 9*]

[Amended by Acts 1977, 65th Leg., p. 133, ch. 62, § 1, eff. Aug. 29, 1977.]

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].

1645e-4. Compensation of Auditor in Rusk County [NEW].

1666b. Budget Officer in Certain Counties Over 1,200,000 [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. 1645e-4. Compensation of Auditor in Rusk County

The county auditor of Rusk County is entitled to compensation as determined by the district judge or judges having jurisdiction in the county, but the compensation may not exceed the total compensation the county judge receives from all sources.
[Acts 1977, 65th Leg., p. 1420, ch. 578, § 1, eff. Aug. 29, 1977.]

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. 1659. Bids for Material

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. The county auditor shall advertise the bidding at least once a week for two consecutive weeks in at least one newspaper published and circulated in the county. The advertisements shall state where the specifications are to be found, and shall give the time and place for receiving the bids. Publication of the first advertisement shall precede the last day for receiving bids by at least 14 days. All such competitive bids shall be kept on file by the county auditor as a part of the records of his office, and shall be subject to inspection by any one desiring to see them. Copies of all bids received shall be furnished by the county auditor to the county judge and to the commissioners court; and when the bids received are not satisfactory to the said judge or county commissioners, the auditor shall reject said bids and readvertise for new bids. In cases of emergency, purchases not in excess of \$1,000 may be made upon requisition to be approved by the commissioners court without advertising for competitive bids.

[Amended by Acts 1977, 65th Leg., p. 331, ch. 161, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1437, ch. 582, § 1, eff. Aug. 29, 1977.]

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.]

Art. 1666a. Budget; Counties Over 225,000

Repeal of Conflicting Laws

Acts 1977, 65th Leg., p. 1278, ch. 500, classified as art. 1666b, and providing for a budget officer in certain counties over 1,200,000, provides in § 12 that to the extent that any provisions of the Act conflict with provisions in this article, such provisions in this article are repealed to the extent of the conflict.

Art. 1666b. Budget Officer in Certain Counties Over 1,200,000

Authorization to Appoint

Sec. 1. In the preparation of the county budget, the commissioners court in counties having a population in excess of 1,200,000, but excluding any county with a city with more than 1,000,000 in population as shown by the last preceding United States Census may appoint a budget officer to prepare a county budget for the current fiscal and calendar year.

Abolition of Office

Sec. 2. A county which has established an office of county budget officer may abolish such office only by formal action of the commissioners court taken after February 1 and before June 1, at which time the county auditor shall assume all lawful responsibilities as the chief budget officer of the county.

Preparation of Budget

Sec. 3. Such budget shall be carefully itemized so as to make possible as clear a comparison as practicable between expenditures included in the proposed budget and actual expenditures for the same or similar purposes for the preceding year. The budget shall be so prepared as to show with reasonable accuracy each of the various projects for which appropriations are set up in the budget and the estimated amount of money carried in the budget for each of such projects.

Contents of Budget

Sec. 4. The county budget officer shall obtain from the county auditor the necessary information so that the budget will contain a complete financial statement of the county showing all outstanding obligations of the county, the cash on hand to the credit of every and each fund of the county government, the funds received from all sources during the previous year, the funds and revenue estimated by the auditor to be received from all sources during the previous year, the funds and revenue estimated by the auditor to be received from all sources during the ensuing year, together with a statement of all accounts and contracts on which sums are due to or by the county as of December 31 of the year preceding, except taxes and court costs.

Limitation on Payments; Budget Available for Public Inspection

Sec. 5. Until a budget has been adopted by the commissioners court, no payments shall be made during the current year except for emergencies and for obligations legally incurred prior to January 1 of such year for salaries, utilities, materials, and supplies. A copy of the budget shall be filed with the clerk of the county court and the county auditor, and it shall be available for inspection to the public.

Public Hearings; Changes in Budget

Sec. 6. The commissioners court in each county shall provide for a public hearing on the county budget, which hearing shall take place on some date to be named by the commissioners court within seven calendar days after the filing of the budget and prior to January 31 of the current year. Public notice shall be given that on the date of said hearing the budget as prepared by the county budget officer will be considered by the commissioners court. Said notice shall name the hour, the date, and the place the hearing shall be conducted and shall be published once in a newspaper of general circulation in said county. Any taxpayer of such county shall have the right to be present and participate in said hearing. At the conclusion of the hearing, the budget as prepared by the county budget officer shall be acted upon by the commissioners court. The court shall have authority to make such changes in the budget as in its judgment the facts and the law warrant and the interest of the taxpayers demand, provided the amounts budgeted for current expenditures from the various funds of the county shall not exceed the balances in said funds as of January 1, plus the anticipated revenue for the current year for which the budget is made as estimated by the county auditor.

Filing of Budget Upon Final Approval

Sec. 7. Upon final approval of the budget by the commissioners court, a copy of such budget as approved shall be filed with the county auditor, the clerk of the court, and the state auditor, and no expenditures of the funds of the county shall thereafter be made except in strict compliance with said budget. Said court may upon proper application transfer an existing budget surplus during the year to a budget of like kind and fund, but no such transfer shall increase the total of the budget.

Obtaining Necessary Information

Sec. 8. In the preparation of the budget, the county budget officer shall have authority to require of any district, county, or precinct officer of the county such information as may be necessary to properly prepare the budget.

Assistance to Commissioners Court

Sec. 9. The county budget officer may also assist the commissioners court in the performance of their duties with regard to the efficiency and effectiveness of county operations.

Employment of Personnel

Sec. 10. The commissioners court of counties covered by this Act are hereby authorized to appoint and employ such other persons they deem necessary

to assist the county budget officer in the performance of his duties.

County Auditor to Retain Certain Duties

Sec. 11. All duties heretofore conferred upon county auditors by Chapter 1, page 144, General Laws, Acts of the 46th Legislature, 1939, as amended (Article 1666a, Vernon's Texas Civil Statutes), not expressly conferred upon the county budget officer by this Act shall continue to be the duties of the county auditor and shall be performed by the county auditor.

Conflicting Provisions Repealed

Sec. 12. To the extent that any provisions of this Act conflict with provisions in Chapter 1, page 144, General Laws, Acts of the 46th Legislature, 1939, as amended (Article 1666a, Vernon's Texas Civil Statutes), concerning the preparation of the county budget, such provisions in Article 1666a, Vernon's Texas Civil Statutes, are repealed to the extent of the conflict.

[Acts 1977, 65th Leg., p. 1278, ch. 500, §§ 1 to 12, eff. Aug. 29, 1977.]

TITLE 35

COUNTY LIBRARIES

1. COUNTY FREE LIBRARIES

Article

1682a. Application of Sunset Act [NEW].

1. COUNTY FREE LIBRARIES

Art. 1682a. Application of Sunset Act

The State Board of Library Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1981.

[Added by Acts 1977, 65th Leg., p. 1836, ch. 735, § 2.030, eff. Aug. 29, 1977.]

¹ Article 5429k.

2. LAW LIBRARY

Arts. 1697 to 1702. Repealed by Acts 1977, 65th Leg., p. 271, ch. 131, § 2, eff. May 11, 1977

See, now, art. 1702h.

Arts. 1702a-1 to 1702b-5. Repealed by Acts 1977, 65th Leg., p. 271, ch. 131, § 2, eff. May 11, 1977

See, now, art. 1702h.

Arts. 1702c to 1702g. Repealed by Acts 1977, 65th Leg., p. 271, ch. 131, § 2, eff. May 11, 1977

See, now, art. 1702h.

Art. 1702h. County Law Libraries in All Counties
[See Compact Edition, Volume 3 for text of 1]

Establishment on Initiative of Commissioners Court;
Appropriations

Sec. 2. The Commissioners Court of any county may establish and provide for the maintenance of such County Law Library on its own initiative, and

appropriate a sum not to exceed \$20,000 to establish properly such library, and shall appropriate each year such sum as may be necessary to properly maintain and operate such County Law Library, which shall be established, maintained and operated at the county seat.

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

Costs; Law Library Fund

Sec. 4. For the purpose of establishing County Law Libraries after the entry of such order, there shall be taxed, collected, and paid as other costs, a sum set by the Commissioners Court not to exceed \$10 in each civil case, except suits for delinquent taxes, hereafter filed in every county or district court; provided, however, that in no event shall the county be liable for said costs in any case. Such costs shall be collected by the clerks of the respective courts in said counties and paid by said clerks to the County Treasurer to be kept by said Treasurer in a separate fund to be known as the "County Law Library Fund." Such fund shall not be used for any other purpose.

[See Compact Edition, Volume 3 for text of 5 to 9]

[Amended by Acts 1977, 65th Leg., p. 270, ch. 131, § 1, eff. May 11, 1977.]

Arts. 1702i, 1702j. Repealed by Acts 1977, 65th Leg., p. 271, ch. 131, § 2, eff. May 11, 1977

Prior to repeal, art. 1702j was amended by Acts 1975, 64th Leg., p. 1901, ch. 609, § 1.

See, now, art. 1702h.

TITLE 38

COURT OF CRIMINAL APPEALS

Article

1811aa. Application of Sunset Act [NEW].

Art. 1811. State Prosecuting Attorneys

The Court of Criminal Appeals shall appoint an attorney to represent the State in all proceedings before said Court, to be styled "State Prosecuting Attorney," who shall take and subscribe the official oath, hold office for a term of two (2) years and until his successor is appointed and qualified, and who shall have had at least five (5) years experience as a practicing attorney in this State in criminal cases. The State Prosecuting Attorney may also appoint one or more Assistant State Prosecuting Attorneys. Assistant State Prosecuting Attorneys shall have the same duties and the same term of

office as the State Prosecuting Attorney. For good cause, the Court of Criminal Appeals shall have power to remove from office State Prosecuting Attorneys.

[Amended by Acts 1977, 65th Leg., p. 675, ch. 256, § 1, eff. Aug. 29, 1977.]

Art. 1811aa. Application of Sunset Act

The office of State Prosecuting Attorney is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished effective September 1, 1987.

[Added by Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.142, eff. Aug. 29, 1977.]

¹ Article 5429k.

TITLE 39

COURTS OF CIVIL APPEALS

CHAPTER ONE. TERMS AND JURISDICTION

Article

1817b. Thirteenth Supreme Judicial District, Places Where Business Transacted [NEW].

Art. 1812. Membership

Text of article conditioned on constitutional amendment

(a) Except as provided in Subsection (b) of this article, each Court of Civil Appeals shall consist of a Chief Justice and two Associate Justices. A majority shall be a quorum for the transaction of business, and the concurrence of two Justices shall be necessary to a decision.

(b) Each Court of Civil Appeals for the First, Fourteenth, and Fifth Supreme Judicial Districts shall consist of a Chief Justice and five Associate Justices and may sit in panels of not less than three Justices. Effective January 1, 1983, the Court of Civil Appeals for the Second Supreme Judicial District shall consist of a Chief Justice and five Associate Justices and may sit in panels of not less than three Justices. The concurrence of a majority of a panel is necessary for a decision.

(c) When additional Justices of a Court of Civil Appeals are elected and qualified, they shall draw lots for their terms of office, as provided by law for Justices of the Courts of Civil Appeals after the initial creation of such courts.

(d) A Justice of the Court of Civil Appeals may be assigned temporarily to another Court of Civil Appeals by the Chief Justice of the Supreme Court regardless of whether a vacancy exists in the Court of Civil Appeals to which he is assigned. A qualified retired Justice may be assigned to a Court of Civil Appeals for active service regardless of whether a vacancy exists.

[Amended by Acts 1977, 65th Leg., p. 1531, ch. 624, § 1, eff. upon adoption of S. J. R. No. 45.]

Section 2 of the 1977 amendatory act provided:

"This Act takes effect on approval by the qualified voters of this state of an amendment to the Texas Constitution providing that each court of civil appeals shall consist of a chief justice and not less than two associate justices."

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 EMPLOYES

Article

1831a. Thirteenth Supreme Judicial District; Reproduction Recording and Retention of Records [NEW].

1831b. 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.]

Art. 1831b. Reproduction, Recording, and Retention of Records

Plan for Reproduction

Sec. 1. The clerks of the courts of civil appeals may, pursuant to their duty to preserve: (1) all records certified to their courts, (2) all papers relative thereto, (3) all orders and opinions of the judges of those courts, and (4) all other documents of or proceedings in those courts, 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 records for which the clerks are 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. The 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 clerks.

(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 authorized by this Act, and all processes of development, fixation, and washing of the 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 or clerks may present the plan in writing to the justices of the court of civil appeals. 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 clerks in writing, and the clerks may adopt the plan. The decision of the justices shall be entered in the minutes of the court, and thereafter all reproductions of original documents of the 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 the hearing or proceeding, after one year has elapsed following the time at which the judgment of the 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 the documents and records.

[Acts 1977, 65th Leg., p. 342, ch. 169, §§ 1 to 4, eff. Aug. 29, 1977.]

TITLE 40

COURTS—DISTRICT

Chapter	Article
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3. Powers and Jurisdiction	1906
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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

1916a. Exchange of Benches by Judges of the 51st and 119th Judicial Districts [NEW].

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. 1911a. Contempt; Power of Courts; Penalties

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

Work-Release Sentence for Child Nonsupport

Sec. 4. Section 5, Article 42.03, Code of Criminal Procedure, 1965, as amended, applies when a person is punished by confinement for contempt of court for disobedience of court order to make periodic payments for the support of a child.

[Amended by Acts 1977, 65th Leg., p. 2076, ch. 827, § 2, eff. Aug. 29, 1977.]

Art. 1916a. Exchange of Benches by Judges of the 51st and 119th Judicial Districts

Sec. 1. The provisions of this Act authorize the exchange of benches without formal order by the judges of the 51st Judicial District and the 119th Judicial District and are applicable in each county in those districts, including the counties in which the districts do not overlap.

Sec. 2. The judges of those courts may, in their discretion, exchange benches from time to time, and any of the judges may, in his own courtroom, try and determine any case or proceeding pending in any of the other courts without having the case transferred, or may sit in any of the other courts 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 filed in the same court at the same time and each may occupy his own courtroom or the room of any other court. In case of absence, sickness, or disqualification of any of those judges, any of the other of those judges may hold court for him. Any of the judges may hear any part of any case or proceeding pending in any of those courts and determine the same or may hear and determine any question in any case, and any other of those judges may complete the hearing and render judgment in the case. Any of those judges may hear and determine motions, petitions for injunction, application for appointment of receivers, interventions, pleas of privilege, pleas in abatement, all dilatory pleas, motions for new trials and all preliminary matters, questions, and proceedings

and may enter judgment or order thereon in the court in which the case is pending without having the case transferred to the court of the judge acting, and the judge in whose court the case is pending may thereafter proceed to hear, complete, and determine the case or other matter or any part thereof and render final judgment thereon. Any of the judges of those courts may issue restraining orders and injunctions returnable to any of the other judges or courts.

[Acts 1977, 65th Leg., p. 656, ch. 246, §§ 1, 2, eff. May 25, 1977.]

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 FOUR A. FAMILY DISTRICT COURTS [NEW]

Art. 1926a. Family District Court Act

SUBCHAPTER A. GENERAL PROVISIONS

Short title

Sec. 1.01. This Act may be cited as the Family District Court Act.

Purpose

Sec. 1.02. (a) This Act substitutes district courts of general jurisdiction, to be called family district

courts, for the existing domestic relations courts and special juvenile courts. It also restructures existing juvenile boards in certain counties and provides for the future creation and organization of juvenile boards in other counties. Subchapter A contains general provisions applicable to all family district courts, now or later created, and Subchapter B creates the new family district courts. Subchapter C contains temporary provisions.

(b) This Act is designed so that future legislatures may create new family district courts by adding a section to Subchapter B without repeating the general provisions of Subchapter A relating to jurisdiction, terms, personnel, facilities, and administration of all family district courts.

Jurisdiction

Sec. 1.03. (a) A family district court has the jurisdiction and power provided for district courts by the constitution and laws of this state. Its jurisdiction is concurrent with that of other district courts in the county in which it is located.

(b) A family district court shall have primary responsibility for cases involving family law matters. These matters include but are not limited to:

- (1) adoptions;
- (2) birth records;
- (3) divorce and marriage annulment;
- (4) child welfare, custody, support and reciprocal support, dependency, neglect, and delinquency;
- (5) parent and child; and
- (6) husband and wife.

(c) This Act does not limit the jurisdiction of other district courts nor relieve them of responsibility for handling cases involving family law matters.

Terms of Court

Sec. 1.04. The terms of a family district court begin on the first Monday in January and the first Monday in July of each year. Each term of court continues until the next succeeding term begins.

Judge

Sec. 1.05. (a) A family district court judge's qualifications and term of office are the same as those prescribed by the constitution and laws of this state for district judges. A family district court judge is elected in the same manner as a district judge.

(b) A family district court judge is entitled to the same compensation and allowances provided by the state and county for the other district judges in his county.

Court Officials, Personnel, and Facilities

Sec. 1.06. (a) Each family district court judge may appoint an official court reporter. The reporter must have the qualifications prescribed by law for that office and is entitled to the same compensation, fees, and allowances provided by law for other official court reporters in the county.

(b) The district attorney, criminal district attorney, or county attorney, and the sheriff and district clerk shall serve each family district court in his county in the same manner he serves the district court or courts of his county.

(c) The commissioners court of the county in which a family district court is located shall provide the physical facilities and the deputy clerks, bailiffs, and other personnel necessary to operate the family district court.

County Juvenile Board

Sec. 1.07. (a) Except as otherwise provided in this section, when a family district court is created in a county, that county's juvenile board is composed of the county judge, the family district court judge or judges, the district judge or judges whose jurisdiction includes the county, and the judges of all other courts in the county having jurisdiction over juvenile matters. Except in counties where there is only one family district court judge, the members of the juvenile board shall select a family district court judge to serve as chairman of the board. The juvenile board has the powers and duties prescribed by law.

(b) The juvenile board shall appoint a chief juvenile probation officer who shall serve as the chief administrative officer of the family district court at the pleasure of the juvenile board. Subject to approval of the juvenile board, the chief juvenile probation officer shall select as many assistant probation officers and other personnel as are necessary to perform the duties assigned him by the juvenile board.

(c) The commissioners court may compensate juvenile board members for their duties performed on the juvenile board beyond such compensation as is otherwise provided for by law, and this compensation is in addition to all other compensation paid by the state or county to district, family district, and county judges. On recommendation of the juvenile board, the commissioners court shall also:

- (1) fix the compensation of the chief juvenile probation officer and the members of his staff; and
- (2) provide the physical facilities necessary to operate the juvenile board.

(d) The creation of a family district court in a county also creates a juvenile board in that county if one does not exist.

(e) This Act does not affect the composition or organization of any juvenile board existing on the effective date of the Act, except that the judges of the courts of domestic relations and of the juvenile courts are replaced by the family district court judges.

Judicial Retirement

Sec. 1.08(b).¹ Each judge, at his option, may pay into the State Treasury no less than six percent plus interest of that salary that would have been paid to him had he been paid by the state for his full tenure on any court of domestic relations or special juvenile court. Upon such payment and the compliance with the transfer herein provided the judge will be given full credit for such tenure toward state judicial retirement.

In addition for such full credit to apply, any judge of the family district court who elects to secure credit in the judicial retirement system pursuant to this section shall forfeit all rights to any county and district retirement system other than the reserves for the additional funds, if any, paid by the county to such judge over and above the amount of state salary paid to district judges by the state, for the tenure for which credit is sought. Such county and district retirement systems shall transfer to the judicial retirement system all sums credited to the account of such judge except the amount paid in for such additional salary, if any, whether paid by the judge or by the employer, plus accumulated interest thereon, in such county and district retirement system. Such sum paid into the judicial retirement system by any county and district retirement systems shall be first applied against the judges' required six percent payment herein set out and any remainder shall remain in the General Revenue Fund.

¹ So in enrolled bill; there is no sec. 1.08(a).

SUBCHAPTER B. CREATING FAMILY DISTRICT COURTS

300th District Court

Sec. 2.01. On the effective date specified in Section 3.02 of this Act, the 300th Judicial District is created. Its boundaries are coextensive with the boundaries of Brazoria County, and its court, which replaces the Court of Domestic Relations for Brazoria County, is the 300th District Court. The 300th District Court may be called the Family District Court for the 300th Judicial District.

301st District Court

Sec. 2.02. On the effective date specified in Section 3.02 of this Act, the 301st Judicial District is created. Its boundaries are coextensive with the boundaries of Dallas County, and its court, which replaces the Court of Domestic Relations for Dallas County, is the 301st District Court. The 301st Dis-

trict Court may be called the Family District Court for the 301st Judicial District.

302nd District Court

Sec. 2.03. On the effective date specified in Section 3.02 of this Act, the 302nd Judicial District is created. Its boundaries are coextensive with the boundaries of Dallas County, and its court, which replaces the Court of Domestic Relations No. 2 for Dallas County, is the 302nd District Court. The 302nd District Court may be called the Family District Court for the 302nd Judicial District.

303rd District Court

Sec. 2.04. On the effective date specified in Section 3.02 of this Act, the 303rd Judicial District is created. Its boundaries are coextensive with the boundaries of Dallas County, and its court, which replaces the Court of Domestic Relations No. 3 for Dallas County, is the 303rd District Court. The 303rd District Court may be called the Family District Court for the 303rd Judicial District.

304th District Court

Sec. 2.05. On the effective date specified in Section 3.02 of this Act, the 304th Judicial District is created. Its boundaries are coextensive with the boundaries of Dallas County, and its court, which replaces the Juvenile Court of Dallas County, is the 304th District Court. The 304th District Court may be called the Family District Court for the 304th Judicial District.

305th District Court

Sec. 2.06. On the effective date specified in Section 3.02 of this Act, the 305th Judicial District is created. Its boundaries are coextensive with the boundaries of Dallas County, and its court, which replaces the Juvenile Court No. 2 of Dallas County, is the 305th District Court. The 305th District Court may be called the Family District Court for the 305th Judicial District.

306th District Court

Sec. 2.07. On the effective date specified in Section 3.02 of this Act, the 306th Judicial District is created. Its boundaries are coextensive with the boundaries of Galveston County, and its court, which replaces the Court of Domestic Relations for Galveston County, is the 306th District Court. The 306th District Court may be called the Family District Court for the 306th Judicial District.

307th District Court

Sec. 2.08. On the effective date specified in Section 3.02 of this Act, the 307th Judicial District is created. Its boundaries are coextensive with the boundaries of Gregg County, and its court, which replaces the Court of Domestic Relations for Gregg County, is the 307th District Court. The 307th District Court may be called the Family District Court for the 307th Judicial District.

308th District Court

Sec. 2.09. On the effective date specified in Section 3.02 of this Act, the 308th Judicial District is created. Its boundaries are coextensive with the boundaries of Harris County, and its court, which replaces the Court of Domestic Relations for Harris County, is the 308th District Court. The 308th District Court may be called the Family District Court for the 308th Judicial District.

309th District Court

Sec. 2.10. On the effective date specified in Section 3.02 of this Act, the 309th Judicial District is created. Its boundaries are coextensive with the boundaries of Harris County, and its court, which replaces the Court of Domestic Relations No. 2 for Harris County, is the 309th District Court. The 309th District Court may be called the Family District Court for the 309th Judicial District.

310th District Court

Sec. 2.11. On the effective date specified in Section 3.02 of this Act, the 310th Judicial District is created. Its boundaries are coextensive with the boundaries of Harris County, and its court, which replaces the Court of Domestic Relations No. 3 for Harris County, is the 310th District Court. The 310th District Court may be called the Family District Court for the 310th Judicial District.

311th District Court

Sec. 2.12. On the effective date specified in Section 3.02 of this Act, the 311th Judicial District is created. Its boundaries are coextensive with the boundaries of Harris County, and its court, which replaces the Court of Domestic Relations No. 4 for Harris County, is the 311th District Court. The 311th District Court may be called the Family District Court for the 311th Judicial District.

312th District Court

Sec. 2.13. On the effective date specified in Section 3.02 of this Act, the 312th Judicial District is created. Its boundaries are coextensive with the boundaries of Harris County, and its court, which replaces the Court of Domestic Relations No. 5 for Harris County, is the 312th District Court. The 312th District Court may be called the Family District Court for the 312th Judicial District.

313th District Court

Sec. 2.14. On the effective date specified in Section 3.02 of this Act, the 313th Judicial District is created. Its boundaries are coextensive with the boundaries of Harris County, and its court, which replaces the Juvenile Court for Harris County, is the 313th District Court. The 313th District Court may be called the Family District Court for the 313th Judicial District.

314th District Court

Sec. 2.15. On the effective date specified in Section 3.02 of this Act, the 314th Judicial District is created. Its boundaries are coextensive with the boundaries of Harris County, and its court, which replaces the Juvenile Court No. 2 for Harris County, is the 314th District Court. The 314th District Court may be called the Family District Court for the 314th Judicial District.

315th District Court

Sec. 2.16. On the effective date specified in Section 3.02 of this Act, the 315th Judicial District is created. Its boundaries are coextensive with the boundaries of Harris County, and its court, which replaces the Juvenile Court No. 3 for Harris County, is the 315th District Court. The 315th District Court may be called the Family District Court for the 315th Judicial District.

316th District Court

Sec. 2.17. On the effective date specified in Section 3.02 of this Act, the 316th Judicial District is created. Its boundaries are coextensive with the boundaries of Hutchinson County, and its court, which replaces the Court of Domestic Relations for Hutchinson County, is the 316th District Court. The 316th District Court may be called the Family District Court for the 316th Judicial District.

317th District Court

Sec. 2.18. On the effective date specified in Section 3.02 of this Act, the 317th Judicial District is created. Its boundaries are coextensive with the boundaries of Jefferson County, and its court, which replaces the Court of Domestic Relations for Jefferson County, is the 317th District Court. The 317th District Court may be called the Family District Court for the 317th Judicial District.

318th District Court

Sec. 2.19. On the effective date specified in Section 3.02 of this Act, the 318th Judicial District is created. Its boundaries are coextensive with the boundaries of Midland County, and its court, which replaces the Court of Domestic Relations for Midland County, is the 318th District Court. The 318th District Court may be called the Family District Court for the 318th Judicial District.

319th District Court

Sec. 2.20. On the effective date specified in Section 3.02 of this Act, the 319th Judicial District is created. Its boundaries are coextensive with the boundaries of Nueces County, and its court, which replaces the Court of Domestic Relations for Nueces County, is the 319th District Court. The 319th District Court may be called the Family District Court for the 319th Judicial District.

320th District Court

Sec. 2.21. On the effective date specified in Section 3.02 of this Act, the 320th Judicial District is created. Its boundaries are coextensive with the boundaries of Potter County, and its court, which replaces the Court of Domestic Relations for Potter County, is the 320th District Court. The 320th District Court may be called the Family District Court for the 320th Judicial District.

321st District Court

Sec. 2.22. On the effective date specified in Section 3.02 of this Act, the 321st Judicial District is created. Its boundaries are coextensive with the boundaries of Smith County, and its court, which replaces the Court of Domestic Relations for Smith County, is the 321st District Court. The 321st District Court may be called the Family District Court for the 321st Judicial District.

322nd District Court

Sec. 2.23. On the effective date specified in Section 3.02 of this Act, the 322nd Judicial District is created. Its boundaries are coextensive with the boundaries of Tarrant County, and its court, which replaces the Court of Domestic Relations No. 1 for Tarrant County, is the 322nd District Court. The 322nd District Court may be called the Family District Court for the 322nd Judicial District.

323rd District Court

Sec. 2.24. On the effective date specified in Section 3.02 of this Act, the 323rd Judicial District is created. Its boundaries are coextensive with the boundaries of Tarrant County, and its court, which replaces the Court of Domestic Relations No. 2 for Tarrant County, is the 323rd District Court. The 323rd District Court may be called the Family District Court for the 323rd Judicial District.

324th District Court

Sec. 2.25. On the effective date specified in Section 3.02 of this Act, the 324th Judicial District is created. Its boundaries are coextensive with the boundaries of Tarrant County, and its court, which replaces the Court of Domestic Relations No. 3 for Tarrant County, is the 324th District Court. The 324th District Court may be called the Family District Court for the 324th Judicial District.

325th District Court

Sec. 2.26. On the effective date specified in Section 3.02 of this Act, the 325th Judicial District is created. Its boundaries are coextensive with the boundaries of Tarrant County, and its court, which replaces the Court of Domestic Relations No. 4 for Tarrant County, is the 325th District Court. The 325th District Court may be called the Family District Court for the 325th Judicial District.

326th District Court

Sec. 2.27. On the effective date specified in Section 3.02 of this Act, the 326th Judicial District is created. Its boundaries are coextensive with the boundaries of Taylor County, and its court, which replaces the Court of Domestic Relations for Taylor County, is the 326th District Court. The 326th District Court may be called the Family District Court for the 326th Judicial District.

327th District Court

Sec. 2.28. On the effective date specified in Section 3.02 of this Act, the 327th Judicial District is created. Its boundaries are coextensive with the boundaries of El Paso County, and its court, which replaces the Court of Domestic Relations for El Paso County, is the 327th District Court. The 327th District Court may be called the Family District Court for the 327th Judicial District.

328th District Court

Sec. 2.29. On the effective date specified in Section 3.02 of this Act, the 328th Judicial District is created. Its boundaries are coextensive with the boundaries of Fort Bend County, and its court, which replaces the Court of Domestic Relations of Fort Bend County, is the 328th District Court. The 328th District Court may be called the Family District Court for the 328th Judicial District.

329th District Court

Sec. 2.30. On the effective date specified in Section 3.02 of this Act, the 329th Judicial District is created. Its boundaries are coextensive with the boundaries of Wharton County, and its court, which replaces the Court of Domestic Relations of Wharton County, is the 329th District Court. The 329th District Court may be called the Family District Court for the 329th Judicial District.

330th District Court

Sec. 2.31. On the effective date specified in Section 3.02 of this Act, the 330th Judicial District is created. Its boundaries are coextensive with the boundaries of Dallas County, and its court, which replaces the Court of Domestic Relations No. 4 of Dallas County, is the 330th District Court. The 330th District Court may be called the Family District Court for the 330th Judicial District.

SUBCHAPTER C. TEMPORARY PROVISIONS

Appointment

Section 3.01. The first judge of a family district court created in this Act is appointed by the governor.

Effective Date

Sec. 3.02. Subchapter B of this Act shall become effective immediately.

Transfer of Pending Cases, Process, and Writs

Sec. 3.03. When a family district court is created:

- (1) all cases pending in the replaced court are transferred to the family district court which replaces it; and
- (2) all process and writs pending in or issued by the replaced court are transferred to the family district court which replaces it and are returnable to that family district court.

Repealer

Sec. 3.04. (a) Each act creating or providing for a court replaced by a family district court under this Act is repealed on the date the family district court is created.

(b) The following acts are repealed on the dates provided in Subsection (a) of this section:

- (1) Chapter 426, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 2338-3, Vernon's Texas Civil Statutes);
- (2) Chapter 23, Acts of the 55th Legislature, 1st Called Session, 1957, as amended (Article 2338-3a, Vernon's Texas Civil Statutes);
- (3) Chapter 325, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 2338-5, Vernon's Texas Civil Statutes);
- (4) Chapter 49, Acts of the 54th Legislature, 1955, as amended (Article 2338-7, Vernon's Texas Civil Statutes);
- (5) Chapter 157, Acts of the 55th Legislature, Regular Session, 1957 (Article 2338-7a, Vernon's Texas Civil Statutes);
- (6) Chapter 16, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 2338-8, Vernon's Texas Civil Statutes);
- (7) Chapter 511, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 2338-9, Vernon's Texas Civil Statutes);
- (8) Chapter 13, Acts of the 56th Legislature, 3rd Called Session, 1959, as amended (Article 2338-9a, Vernon's Texas Civil Statutes);
- (9) Chapter 31, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 2338-10, Vernon's Texas Civil Statutes);
- (10) Chapter 242, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 2338-11, Vernon's Texas Civil Statutes);
- (11) Chapter 299, Acts of the 58th Legislature, 1963, as amended (Article 2338-11a, Vernon's Texas Civil Statutes);
- (12) Chapter 443, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 2338-13, Vernon's Texas Civil Statutes);

(13) Chapter 159, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 2338-14, Vernon's Texas Civil Statutes);

(14) Section 2, Chapter 212, Acts of the 59th Legislature, Regular Session, 1965 (Section 2, Article 6819a-39, Vernon's Texas Civil Statutes);

(15) Chapter 6, Acts of the 57th Legislature, 3rd Called Session, 1962, as amended (Article 2338-15, Vernon's Texas Civil Statutes);

(16) Chapter 278, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 2338-15a, Vernon's Texas Civil Statutes);

(17) Chapter 64, Acts of the 57th Legislature, 3rd Called Session, 1962, as amended (Article 2338-16, Vernon's Texas Civil Statutes);

(18) Chapter 44, Acts of the 58th Legislature, 1963, as amended (Article 2338-17, Vernon's Texas Civil Statutes);

(19) Chapter 289, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 2338-18, Vernon's Texas Civil Statutes);

(20) Chapter 307, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 2338-19, Vernon's Texas Civil Statutes);

(21) Chapter 537, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 2338-20, Vernon's Texas Civil Statutes);

(22) Chapter 780, Acts of the 60th Legislature, Regular Session, 1967 (Article 2338-9b, Vernon's Texas Civil Statutes);

(23) Chapter 781, Acts of the 60th Legislature, Regular Session, 1967 (Article 2338-15b, Vernon's Texas Civil Statutes);

(24) Chapter 465, Acts of the 61st Legislature, Regular Session, 1969 (Article 2338-11b, Vernon's Texas Civil Statutes);

(25) Chapter 761, Acts of the 61st Legislature Regular Session, 1969, as amended (Article 2338-15c, Vernon's Texas Civil Statutes);

(26) Chapter 786, Acts of the 61st Legislature, Regular Session, 1969 (Article 2338-9c, Vernon's Texas Civil Statutes);

(27) Chapter 673, Acts of the 61st Legislature, Regular Session, 1969 (Article 2338-18a, Vernon's Texas Civil Statutes);

(28) Chapter 844, Acts of the 62nd Legislature, Regular Session, 1971 (Article 2338-21, Vernon's Texas Civil Statutes);

(29) Chapter 100, Acts of the 63rd Legislature, Regular Session, 1973 (Article 2338-22, Vernon's Texas Civil Statutes);

(30) Chapter 201, Acts of the 63rd Legislature, Regular Session, 1973 (Article 2338-23, Vernon's Texas Civil Statutes); and

(31) Chapter 207, Acts of the 63rd Legislature, Regular Session, 1973 (Article 2338-9b.1, Vernon's Texas Civil Statutes).

(c) Chapter 393, Acts of the 52nd Legislature, 1951 (Article 2338-4, Vernon's Texas Civil Statutes), and Chapter 434, Acts of the 53rd Legislature, Regular Session, 1953 (Article 2338-6, Vernon's Texas Civil Statutes), are repealed.

(d) All other laws or parts of laws in conflict with this Act are repealed to the extent of the conflict.

SUBCHAPTER D. MISCELLANEOUS PROVISIONS

Effective Date

Section. 4.00. This Act takes effect on September 1, 1977.

[Acts 1977, 65th Leg., p. 2144, ch. 859 eff. Sept. 1, 1977.]

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].
- 1934b. Court Administrator System for County Courts in Certain Counties [NEW].
- 1934c. Court Manager and Coordinator System for Courts Having Criminal Jurisdiction in Counties Over 1,500,000 [NEW].
- 1934d. Ministerial Practices and Procedures in Courts Having Criminal Jurisdiction in Counties Over 1,500,000 [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. * * *"

Art. 1934b. Court Administrator System for County Courts in Certain Counties

Sec. 1. County criminal courts or county courts at law having jurisdiction in both criminal and civil actions and proceedings in counties having more than one county criminal court or more than one county court at law having jurisdiction in both criminal and civil actions and proceedings may establish and maintain a court administrator's system if approved by the commissioners court. Upon approval, Sections 2, 3, and 4 of this Act shall apply.

Sec. 2. The county criminal courts or the county courts at law having jurisdiction in both criminal and civil actions and proceedings shall, by rule, designate the duties to be performed by the court administrator. The court administrator shall cooperate with the administrative judges and state agencies having duties relating to the operation of the courts to perform uniform and efficient administration of justice.

Sec. 3. (a) The court administrator shall be appointed by the judges of the county criminal courts or the judges of the county courts at law having jurisdiction in both criminal and civil actions and proceedings and shall serve at the pleasure of those courts. The court administrator shall receive reasonable compensation to be determined by the commissioners court not to exceed 70 percent of the salary paid by the county to the judges of those courts.

(b) The judges of those courts shall appoint appropriate staff and supporting personnel according to the needs of each local jurisdiction.

Sec. 4. The commissioners court of each county shall provide from the fines collected by these courts the necessary funding for the court administration system on order and directive of the courts to be served by the court administrator. If the fines are insufficient to provide the total funding for this program, the county shall provide the additional funds needed.

[Acts 1977, 65th Leg., p. 1624, ch. 638, §§ 1 to 4, eff. June 15, 1977.]

Art. 1934c. Court Manager and Coordinator System for Courts Having Criminal Jurisdiction in Counties Over 1,500,000

Courts having the same jurisdiction over criminal justice that are now or may be hereafter vested in county courts having jurisdiction in criminal actions and proceedings under the constitution and laws of Texas in counties with a population in excess of 1,500,000 according to the last preceding federal census may establish and maintain a court manager and coordinator system. The courts shall, by rule, designate and set out the qualifications of and duties to be performed by the court manager and coordinators to improve criminal justice and expedite the processing of criminal cases through the county courts. The court manager and coordinators in each such county shall cooperate with state agencies having duties in the operation of the courts to promote uniform and efficient justice in the state. Nothing in this Act shall be construed to diminish the statutory duties and powers conferred on the clerk of the court, sheriff, district attorney, or any officer of the court. The court manager and coordinators shall serve by and at the pleasure of the courts, and shall receive reasonable compensation, to be determined by the judges of the courts, not more than 60 percent for the court manager and 50 percent for the coordinators of the salary paid to the judges of the courts. The courts may appoint a court manager, coordinators, appropriate staff, and supporting personnel according to the needs of each local jurisdiction. The commissioners court of each such county shall provide from the fines collected by these courts the necessary funding for the court manager and coordinator system on order and directive of the courts to be served provided that if the said fines are insufficient to provide the total funding for this program the county shall provide the additional funds needed.

[Acts 1977, 65th Leg., p. 1891, ch. 752, § 1, eff. Aug. 29, 1977.]

Art. 1934d. Ministerial Practices and Procedures in Courts Having Criminal Jurisdiction in Counties Over 1,500,000

Sec. 1. The judges of courts having the same jurisdiction over criminal matters that are now or may be vested in county courts having jurisdiction in criminal actions and proceedings under the constitution and laws of Texas in counties with a population in excess of 1,500,000 according to the last preceding federal census and in which there are nine or more such courts may select from their number a presiding judge.

(a) The presiding judge shall be selected by a vote of two-thirds of the judges of such courts, for a term of six months, and shall serve until his successor is selected. The selection of such presiding judge may be cancelled and another presiding judge selected to serve the unexpired term of the regularly selected presiding judge by a vote of two-thirds of the judges of such courts. Selection of the presiding judge shall be during the month immediately preceding the term such judge is to serve. Each judge of courts included in this Act shall enter on the minutes of his court an order reciting each selection of a presiding judge.

(b) The presiding judge shall have the following duties and responsibilities pertaining to courts included in this Act:

(1) The presiding judge shall preside at any session of the judges of the courts and be ex officio member of all committees created by the judges in session pertaining to the common goal of the courts in achieving more equal and efficient justice and orderly dispatch of business.

(2) The presiding judge shall be the chief administrator of the office of county court manager and county court coordinators; pretrial release services in all misdemeanor cases; and all other court-related ministerial services in all misdemeanor cases as promulgated by the judges having jurisdiction thereof.

(c) In the event that the judge of any court governed by the provisions of this Act is absent, or is for any cause disabled from presiding, the presiding judge of the courts may appoint a special judge whose qualifications shall be the same as the qualifications of the regular judge, and while serving the special judge shall have the same duties and powers as the regular judge. The provisions of Articles 30.04, 30.05, and 30.06, Code of Criminal Procedure, 1965, relating to the oath, compensation, and record of appointment of certain special judges shall apply to the appointment of a special judge under this section.

Sec. 2. The judges of courts included in this Act may also adopt rules, not inconsistent with the Code

of Criminal Procedure and the Texas Rules of Civil Procedure for practice and procedure in such courts. A rule may be adopted by a two-thirds vote of the judges and upon adoption shall be entered verbatim on the minutes of each of the courts. The clerk of the court shall supply copies of the rules so adopted to every interested person.

[Acts 1977, 65th Leg., p. 1892, ch. 753, §§ 1, 2, eff. Aug. 29, 1977.]

CHAPTER TWO. COUNTY CLERK

Art. 1941(a). Microfilm Records of County Clerks
[See Compact Edition, Volume 2 for Text of 1 to 5]

Checking and Proving Microfilm Records; Return of Original Instruments; Disposition of Printed Records

Sec. 6. (a) Each county clerk and county recorder and clerk of county courts, whenever the original paper record is not retained in the files of the county clerk, shall reproduce from microfilm onto paper records each filmed image on each roll of microfilm, or each filmed image of the discrete group of filmed images of such paper records, and shall inspect and check each reproduced paper record against the original instrument of writing, legal document, paper or record for accuracy and clarity. Should the paper record which was reproduced from a microfilm image be defective in any respect due to the image or images on the microfilm, the original instrument of writing, legal document, paper or record, from which said defective reproduced paper record was made, shall be remicrofilmed on a subsequent roll of microfilm, or on a subsequent discrete image or images of a subsequent discrete group of individual images, to obtain acceptable images on microfilm. A record need not be reproduced if it is transferred to the custody of the state librarian pursuant to state law.

[See Compact Edition, Volume 2 for text of 6(b) to (d)]

[Amended by Acts 1977, 65th Leg., p. 1201, ch. 463, § 9, eff. Aug. 29, 1977.]

CHAPTER FIVE. MISCELLANEOUS PROVISIONS

ACTS CREATING COUNTY COURTS AT LAW AND SIMILAR COURTS, AND AFFECTING PARTICULAR COUNTY COURTS, AND DECISIONS THEREUNDER

DALLAS COUNTY

Article
 1970-31.2. County Court of Dallas County at Law No. 5 [NEW].
 1970-31.15. County Criminal Courts Nos. 6 and 7 of Dallas County [NEW].

Article
 1970-31.30. Retired Judges as Substitutes in Dallas County [NEW].
 1970-31c. Probate Court No. 3 of Dallas County [NEW].

TARRANT COUNTY AT LAW

1970-45a. Compensation of Certain Tarrant County Judges [NEW].

TARRANT COUNTY AT LAW NO. 1

1970-62.2. County Court at Law No. 2 of Tarrant County [NEW].

TARRANT COUNTY CRIMINAL COURTS

1970-62d. County Criminal Court No. 4 of Tarrant County [NEW].

HARRIS COUNTY

1970-110a.3. Probate Court No. 3 of Harris County [NEW].
 1970-110c.3. County Criminal Court at Law No. 8 and 9 [NEW].
 1970-110f. County Civil Court at Law No. 4 of Harris County [NEW].

EL PASO COUNTY

1970-141.3. County Court at Law No. 4 of El Paso County [NEW].

McLENNAN COUNTY

1970-298d. County Court at Law No. 2 of McLennan County [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].

HIDALGO COUNTY

1970-341a. County Court at Law No. 2 of Hidalgo County [NEW].

GALVESTON COUNTY

1970-342b. County Court No. 2 of Galveston County [NEW].
 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].

- Article 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].
- WALKER COUNTY
 1970-367. County Court at Law of Walker County [NEW].
- COMAL COUNTY
 1970-368. County Court at Law of Comal County [NEW].
- TOM GREEN COUNTY
 1970-369. County Court at Law of Tom Green County [NEW].
- MIDLAND COUNTY
 1970-370. County Court at Law of Midland County [NEW].
- RANDALL COUNTY
 1970-371. County Court at Law of Randall County [NEW].
- REEVES COUNTY
 1970-372. County Court at Law of Reeves County [NEW].

ACTS CREATING COUNTY COURTS AT LAW AND SIMILAR COURTS, AND AFFECTING PARTICULAR COUNTY COURTS, AND DECISIONS THEREUNDER.

DALLAS COUNTY

Art. 1970-31.2 County Court of Dallas County at Law No. 5

Sec. 1. On January 1, 1979, there is created a county court to be held in Dallas County to be known as "County Court of Dallas County at Law No. 5." The seal of the court shall be the same as provided by law for county courts, except the seal shall contain the words "County Court of Dallas County at Law No. 5."

Sec. 2. The court hereby created shall have exclusive, concurrent civil jurisdiction of all cases, original and appellate, over which by the laws of the State of Texas the existing County Courts of Dallas County at Law Nos. 1, 2, 3, and 4 have original and appellate jurisdiction. In addition thereto, it is specifically provided that the County Courts of Dallas County at Law Nos. 1, 2, 3, 4, and 5 shall have concurrent and coextensive and equal jurisdiction over all civil, administrative, and ministerial acts and over the filing and disposition of all proceedings in eminent domain matters. The judge of any county court at law of Dallas County may sit for the judge of any other county court at law of Dallas County when such judge is unavailable for the performing of any of the administrative acts in connection with eminent domain proceedings, but the performing of the same shall not transfer the cause or proceedings from the court for which the act was

performed. All civil cases appealed from the several justice courts of Dallas County shall be filed by the county clerk in the several county courts of Dallas County at law consecutively as the appeal cases are received by the clerk from the several justices of the peace in the county, except in cases wherein the judge of any one of the county courts at law has granted a writ of certiorari, in which case the same shall be docketed in the court so granting the writ and shall not be transferred from that court.

Sec. 3. The County Court of Dallas County at Law No. 5 shall be known as the "E" Court. The county clerk shall number consecutively all cases filed in the county courts of Dallas County at law affixing immediately following the number of all cases the letter A, B, C, D, or E, according to which county court of Dallas County at law the case is assigned, and each case so filed shall be filed in rotation in each of the county courts of Dallas County at law with the letter designation being used to denote the court in which the case is filed. The judge of any one of the county courts of Dallas County at law shall have the power to transfer to any of the other of those courts any case pending on the docket of the court, except where a writ of certiorari has been granted, provided that the cases so transferred shall be for the purpose of equalizing the dockets of each of the county courts of Dallas County at law. Each of the judges of those courts shall together at least once a year transfer cases from one to another in order to equalize the dockets.

Sec. 4. All of the county courts of Dallas County at law and the respective judges thereof shall have the power to issue writs of injunction, sequestration, attachment, garnishment, certiorari, and supersedeas and all other writs and processes necessary to the enforcement of their jurisdiction, and also power to punish for contempt under such provisions as are or may be provided by the general laws governing county courts throughout the state.

Sec. 5. The terms of the County Court of Dallas County at Law No. 5 shall be held six times each year on the first Monday in January, March, May, July, September, and November, and each term shall continue until the business is disposed of.

Sec. 6. (a) The judge of the County Court of Dallas County at Law No. 5 shall be a licensed attorney in this state, informed in the laws of the state, and shall have resided in and shall have been actively engaged in the practice of law in Dallas County for a period of not less than four years prior to his election or appointment. The commissioners court shall fix the salary of each of the judges of the county courts of Dallas County at law at not less than \$1,000 less per annum than the total annual salary, including supplements, received by judges of the district courts in Dallas County, which shall be paid in 12 equal monthly installments.

(b) 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 court created in the Act for regular terms of four years beginning on January 1, 1979, as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(c) A vacancy in the office of judge shall be filled by appointment by the Commissioners Court of Dallas County, and the appointee shall hold office until the next general election and until his successor is duly elected and has qualified.

Sec. 7. After this court is created, it shall be the duty of the judges of the county courts of Dallas County at law to transfer immediately from their dockets a portion of the civil cases pending on their dockets to the court hereby created, which shall be done by beginning with the oldest case pending on the docket of each court and transferring cases without reference to whether any particular case is pending on the jury or nonjury docket of that court.

Sec. 8. In case of disqualification, an overcrowded docket, sickness, or absence from the county of any of the judges of the County Courts of Dallas County at Law Nos. 1, 2, 3, 4, and 5, any other judge of those courts may exchange benches with that judge, and, when exchanging benches with any of the other judges of the county courts at law, shall have all of the power and jurisdiction of the court and judge for whom he is sitting while exchanging benches and may sign orders, judgments, and decrees or other process of any kind as "Judge Presiding" when acting for a disqualified or absent judge on request, or in an emergency without request, or for any other good cause shown. This authority is in addition to the provisions hereinabove made for performing administrative matters for each other.

Sec. 9. Except as otherwise provided in this Act, all laws applicable to County Courts of Dallas County at Law Nos. 1, 2, 3, and 4 shall be applicable to County Court of Dallas County at Law No. 5. [Acts 1977, 65th Leg., p. 1730, ch. 690, §§ 1 to 9, eff. Aug. 29, 1977.]

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. 1970-31.15. County Criminal Courts Nos. 6 and 7 of Dallas County

Sec. 1. On September 1, 1977, there are created two courts to be held in Dallas County to be known and designated as the "County Criminal Court Number 6 of Dallas County, Texas," and the "County Criminal Court Number 7 of Dallas County, Texas."

Sec. 2. The County Criminal Courts Nos. 6 and 7 of Dallas County shall have and the same are vested

with concurrent jurisdiction within the county of all criminal matters and causes, original and appellate, that is now vested in the county courts having jurisdiction in civil and criminal cases under the Constitution and laws of Texas, except as provided in Section 3 of this Act.

Sec. 3. Each of the County Criminal Courts Nos. 6 and 7 of Dallas County, or the judge thereof, shall have the power to issue writs of habeas corpus and grant injunctions for the enforcement of the penal laws in cases where the offense charged is within the jurisdiction of that court or any court or tribunal inferior to that court and shall also have power to punish for contempt under such provisions as are now or may be provided by the general law governing county courts throughout the state.

Sec. 4. The terms of the County Criminal Courts Nos. 6 and 7 of Dallas County and the practice therein and appeals therefrom shall be as prescribed by law relating to the county courts. The terms shall be held not less than four times each year and the Commissioners Court of Dallas County shall fix the time at which the courts shall hold their terms until the same may be changed according to law.

Sec. 5. As soon as practicable after the creation of these courts, there shall be appointed by the Commissioners Court of Dallas County in accordance with the law a judge of each court created in this Act, who shall be well informed in the laws of the state and who shall hold his office until the next succeeding general election and until his successor shall have duly qualified. 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 each of the county criminal courts of Dallas County created in this Act for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. No person shall be eligible for judge of a court created in this Act unless he shall be a citizen of the United States and of this state, who shall have been a practicing lawyer of this state or a judge of a court in this state for four years next preceding his appointment or election and who shall have resided in the county of Dallas for two years next preceding his appointment or election.

Sec. 6. Each judge of a court created in this Act 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 each of the courts created in this Act may be appointed or elected as provided by the laws relating to county courts and the judges thereof.

Sec. 8. The county clerk of Dallas County shall be the clerk of the courts created in this Act. The

seals of the County Criminal Courts Nos. 6 and 7 of Dallas County shall be the same as provided for county courts, except that the seals shall contain the words "The County Criminal Court, Number Six, Dallas County, Texas," and the words "The County Criminal Court, Number Seven, Dallas County, Texas," respectively. The sheriff of Dallas County shall in person or by deputy attend each court created in this Act when required by the judge thereof. The judge of each court created in this Act 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. 9. The judge of each court created in this Act shall collect the same fee provided by law for county judges in similar cases, all of which shall be paid by him monthly into the county treasury. The commissioners court shall fix the salary of each of the judges of the county criminal courts of Dallas County at not less than \$1,000 less per annum than the total annual salary, including supplements, received by judges of the district courts in Dallas County, which shall be paid in 12 equal monthly installments out of the county treasury by the commissioners court. The judge shall devote his entire time to the duties of his office and shall not engage in the practice of the law while in office.

Sec. 10. The judge of each court created in this Act 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 each court created in this Act shall appoint an official shorthand reporter, who shall be well-skilled in his profession, shall be a sworn officer of the court, and who shall hold his office at the pleasure of the court. The provisions of the general laws of Texas relating to the appointment of stenographers for the district courts shall and are hereby made to apply, in all their provisions insofar as they are applicable, to the official shorthand reporters herein authorized to be appointed, and the reporters shall be entitled to the same fees and salary and shall perform the same duties and shall take the same oath as are provided for the stenographers of district courts of this state and shall also be governed by any other laws covering the stenographers of the district courts of this state. The official shorthand reporter of each of these courts shall not be required to take testimony in cases where neither party litigant nor the judge demands it. Where the testimony is taken by the reporter, a fee of \$3 shall be taxed by the clerk as costs in the case to be paid into the county treasury of Dallas County.

Sec. 12. As soon as practicable after the creation of these courts, the clerk of the county criminal courts of Dallas County may transfer to the dockets of the courts created by this Act any of the criminal cases then pending in the County Criminal Court or the County Criminal Court No. 2, 3, 4, or 5 of Dallas County, and thereafter the judge of any of these courts may in his discretion transfer any cause or causes that may at any time be pending in his court to the other courts by an order or orders entered in the minutes of his court, and the judge of the court to which such transfer or transfers are made shall dispose of the cause or causes in the same manner as if the cause or causes were originally instituted in his court.

Sec. 13. The judges of the County Criminal Court of Dallas County and the County Criminal Courts Nos. 2, 3, 4, 5, 6, and 7 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 1977, 65th Leg., p. 1727, ch. 689, §§ 1 to 13, eff. Aug. 29, 1977.]

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 AT LAW

Art. 1970-45a. Compensation of Certain Tarrant County Judges

Effective January 1, 1978, the judges of the county criminal courts of Tarrant County, the probate court of Tarrant County, and the county courts at law of Tarrant County may be paid annually a sum that is at least equal to that sum which is \$8,000 less than the total annual salary as of January 1, 1978, including supplements, of any district judge in Tarrant County. Effective January 1, 1979, they may be paid annually a sum that is at least equal to that sum which is \$5,500 less than the total annual salary as of January 1, 1979, including supplements, of any district judge in Tarrant County. Effective January 1, 1980, they may be paid annually a sum that is at least equal to that sum which is \$3,000 less than the total annual salary as of January 1, 1980, including supplements, of any district judge in Tarrant County. Effective January 1, 1981, they may be paid annually a sum that is at least equal to that sum which is \$1,000 less than the total annual salary, including supplements, of any district judge in Tarrant County. If the annual salary of any district judge in Tarrant County is increased within any calendar year, the salary of the judge of each county court of Tarrant County included in this Act may be increased in an equal amount so that the variance between the salaries of the judges of the county courts and the judges of the district courts does not exceed the amounts specified in this Act.

[Acts 1977, 65th Leg., p. 1821, ch. 730, § 1, eff. Aug. 29, 1977.]

Art. 1970-62.2. County Court at Law No. 2 of Tarrant County

[Text of article added effective January 1, 1979]

Sec. 1. (a) There is created a court to be held in Tarrant County to be known and designated as the "County Court at Law No. 2 of Tarrant County."

(b) The County Court at Law of Tarrant County shall be hereafter known and designated as the "County Court at Law No. 1 of Tarrant County."

Sec. 2. (a) The County Court at Law No. 2 of Tarrant County has jurisdiction of all civil matters and causes, original and appellate, over which by the general laws of the state the county court of the county would have jurisdiction, and its jurisdiction is concurrent with that of the County Court at Law of Tarrant County in civil matters and causes, original and appellate. This provision does not affect the jurisdiction of the commissioners court or of the county judge of Tarrant County as the presiding officer of that court as to roads, bridges, and public highways, and matters which are now within the jurisdiction of the commissioners court or of the judge of the county court of Tarrant County. The county judge of Tarrant County shall be the judge of the county court of Tarrant County, and all ex officio duties of the county judge shall be exercised by the judge of the county court of Tarrant County.

(b) The County Court at Law No. 2 of Tarrant County has the general jurisdiction of a probate court within the limits of Tarrant County, concurrent with the jurisdiction of the County Court of Tarrant County and the Probate Court of Tarrant County in such matters and proceedings. It shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and habitual 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 habitual drunkards, including the settlement, partition, and distribution of estates of deceased persons, lunacy proceedings and the apprenticing of minors as provided by law.

(c) The County Court at Law No. 2 of Tarrant County has jurisdiction concurrent with the district court 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. 3. The County Court at Law No. 2 of Tarrant County, or its judge, has the power to issue writs of injunction, sequestration, attachment, garnishment, certiorari, supersedeas and all other writs necessary to the enforcement of the jurisdiction of the court, to punish for contempts under such provisions as are, or may be, provided by the general laws governing county courts throughout the state, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court, or of any court or tribunal inferior to that court.

Sec. 4. (a) The judges of the County Court at Law of Tarrant County and the County Court at Law No. 2 of Tarrant County may transfer cases to and from the dockets of their respective courts. The judges of the County Court of Tarrant County, the

Probate Court of Tarrant County, and the County Court at Law No. 2 of Tarrant County may transfer matters and proceedings 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) The judges of the county courts at law with civil jurisdiction 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 a 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. In case of the absence, disqualification or incapacity of either the judge of the Probate Court of Tarrant County, or the County Judge of Tarrant County, or the judge of the County Court at Law No. 2 of Tarrant County, or in the discretion of any of them for any other reason, any of those judges may sit and act as judge of another of those courts with respect to any matters referred to in Subsection (b) of Section 2 of this Act, and any of those judges may hear and determine, either in his own courtroom or, with the consent of the judge thereof, in the courtroom of another of those courts, any matter or proceeding pending in any of those courts, and may enter any orders in such matters or proceedings as the judge of the other court might enter if personally presiding therein. However, the judge of any 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.

(c) In cases transferred to any 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 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. 5. The terms of the County Court at Law No. 2 of Tarrant County are the same as the terms for the County Court at Law of Tarrant County.

The practice in the court, and appeals and writs of error therefrom, shall be as prescribed by the laws relating to county courts.

Sec. 6. (a) The judge of the County Court at Law No. 2 of Tarrant County must be a citizen of the United States and of this state, who shall have been a practicing lawyer of this state, or a judge of a court in this state, for four years next preceding his election or appointment, and who shall have resided in the county of Tarrant for two years next preceding his election or appointment.

(b) At the primaries and general election in 1978, there shall be elected by the qualified voters of Tarrant County a judge of the County Court at Law No. 2 for a four-year term beginning on January 1, 1979. Every four years thereafter, this judge shall be elected by the qualified voters of Tarrant County for a four-year term as provided in the Texas Constitution. A vacancy in the office shall be filled by appointment by the Commissioners Court of Tarrant County until the next general election.

Sec. 7. The judge of the County Court at Law No. 2 shall execute a bond and take the oath of office as required by the law relating to county judges.

Sec. 8. A special judge of the County Court at Law No. 2 may be appointed or elected as provided by law relating to county courts and to the judges thereof.

Sec. 9. The county clerk of Tarrant County shall be the clerk for the County Court at Law No. 2. The seal of the court shall be the same as that provided for county courts, except that the seal shall contain the words, "County Court at Law No. 2 of Tarrant County." The sheriff of Tarrant County shall, in person or by deputy, attend the court when required by the judge thereof.

Sec. 10. The jurisdiction and authority now vested by law in the County Court at Law of Tarrant County for the selection and service of jurors shall be exercised by the County Court at Law No. 2.

Sec. 11. The judge of the County Court at Law No. 2 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 commissioners court may fix the amount of compensation to be paid to the judge of the County Court at Law No. 2 of Tarrant County, such compensation to be paid monthly out of the county treasury, provided however, that any such compensation shall be equal to the compensation as provided by law and fixed by the commissioners court for the judge of the County Court at Law No. 1 of Tarrant County. The judge shall not engage in the practice of law while in office.

Sec. 12. The judge of the County Court at Law No. 2 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. 13. The judge of the County Court at Law No. 2 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 reporters 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 reporters of district courts of this state, and shall be governed by any other laws covering the reporters of the district courts of this state.

Sec. 14. With the exception of Subsection (b), Section 6, the provisions of this Act take effect on January 1, 1979.

[Acts 1977, 65th Leg., p. 1532, ch. 625, §§ 1 to 14, eff. Jan. 1, 1979.]

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 8]

Sec. 9. The term of office of the Judge of the Probate Court No. 2 of Harris County shall be for a period of four (4) years; said Judge shall be elected as provided by the Constitution and laws of the State for the election of Judges of County Probate Courts. A Judge of said Court shall be appointed by the Commissioners Court of Harris County as soon as practicable after the passage of this Act, who shall hold office from the date of his appointment until the General Election next before the first full term of office of said Judge, as herein provided and until his successor shall be duly elected and qualified. The Judge of said Court shall be well informed in 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 (5) consecutive years.

[See Compact Edition, Volume 3 for text of 10 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; Acts 1977, 65th Leg., p. 1202, ch. 464, § 1, eff. Aug. 29, 1977.]

Art. 1970-110a.3. Probate Court No. 3 of Harris County

Sec. 1. There is created a county court to be held in and for Harris County, to be called the "Probate Court No. 3 of Harris County, Texas."

Sec. 2. The Probate Court No. 3 of Harris County shall have the general jurisdiction of a probate court within the limits of Harris County, concurrent with the jurisdiction of the County Court of Harris County, Texas, in probate, administrations, guardianship, and mental illness proceedings, and also concurrent with and in all things equal to that heretofore conferred on the Probate Court No. 1 of Harris County, Texas, and Probate Court No. 2 of Harris County, Texas. 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, lunacy proceedings, and the apprenticing of minors as provided by law. It is the intention of this Act that the Probate Court No. 3 of Harris 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 the Probate Court No. 3 of Harris County, Texas, there shall be transferred to the docket of said court, under the jurisdiction of the county judge and the judges of the Probate Court No. 1 of Harris County, and the Probate Court No. 2 of Harris County, and by order entered on the minutes of the County Court of Harris County, and of the Probate Court No. 1 of Harris County, and of the Probate Court No. 2 of Harris County, such number of such proceedings and matters then pending in the County Court of Harris County, in the Probate Court No. 1 of Harris County, and in the Probate Court No. 2 of Harris County, as will equalize the number of such cases pending on the dockets of each of said four courts with the Probate Court No. 3 of Harris County having responsibility at all times for all mental illness proceedings. All writs and processes theretofore issued by or out of the County Court of Harris County, the Probate Court No. 1 of Harris County, and the Probate Court No. 2 of Harris County, in such matters and proceedings shall be returnable to the Probate Court No. 3 of Harris County as though originally issued therefrom. All new mental illness proceedings filed on said day or thereafter with the County Clerk of Harris County irrespective of the court or judge to which the matter or proceedings is addressed, shall be filed by the clerk in the Probate Court No. 3 of Harris County in the order in which the same are deposited with him for filing. All other 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 matter or proceeding is addressed, shall be filed by said clerk so that the cases ending in 0 and 5 shall be filed in the Probate Court No. 3 of Harris County and all other cases or matters ending in an odd number shall be filed in the Probate Court No. 1 of Harris County, and all other cases or matters ending in an even number shall be filed in the Probate Court No. 2 of Harris County, and in the order in which the same are deposited with said clerk for filing, and further said clerk shall keep separate dockets for each of said courts. Each of the judges of the County Court and said Probate Courts Nos. 1, 2, and 3 of Harris County may, at any time, with the

consent of the judge of the county court or probate court to which transfer is to be made, by an order entered on 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.

Sec. 4. The County Court of Harris County shall retain, as heretofore, the powers and jurisdiction of said court existing at the time of the passage of this Act, and shall exercise its powers and jurisdiction as a probate court with respect to all matters and proceedings of such nature, except those matters and proceedings transferred to or filed in said Probate Court No. 1 of Harris County or Probate Court No. 2 of Harris County or Probate Court No. 3 of Harris County. The County Judge of Harris County shall be the Judge of the County Court of Harris County, and all ex officio duties of the County Judge of Harris County as they now exist shall be exercised by the County Judge of Harris County. Nothing contained in this Act shall be construed as in anywise impairing or affecting the jurisdiction of the County Civil Courts at Law Nos. 1, 2, or 3 of Harris County, or the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, 7, 8, or 9 of Harris County, Texas, or any other county court at law of Harris County heretofore or hereafter created.

Sec. 5. The practice and procedure in the Probate Court No. 3 of Harris County shall be the same as that provided by law generally for the county courts of this state, and all statutes and laws of the state, as well as all rules of court relating to proceedings therefrom, shall, as to all matters within the jurisdiction of said court, apply equally thereto.

Sec. 6. The Probate Court No. 3 of Harris County shall have power to issue writs of injunction, mandamus, execution, attachment, and all writs and process necessary to the exercise and enforcement of the jurisdiction of said court, and also the power to punish for contempt under such provisions as are or may be provided by the general laws governing county courts throughout the state.

Sec. 7. The initial term of the Probate Court No. 3 of Harris County shall begin on the first Monday next after the first day of the first calendar month following the effective date of this Act and shall continue until and including Sunday next before the first Monday in January of the following year. Thereafter there shall be two terms of said Probate Court No. 3 of Harris County in each year, and the

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

Sec. 8. When this Act becomes effective, the Commissioners Court of Harris County shall appoint a judge to the Probate Court No. 3 of Harris County. The judge appointed serves until 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 Harris County a judge of the Probate Court No. 3 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 of said court shall be well informed in 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 appointment or election.

Sec. 9. The Judge of the Probate Court No. 3 of Harris County shall execute a bond in the amount of \$100,000 and take the oath of office as required by the laws relating to county judges.

Sec. 10. Any vacancy in the office of the Judge of the Probate Court No. 3 of Harris County may be filled by the appointment of a judge of said court, who shall serve until the next general election and until his successor shall be duly elected and qualified.

Sec. 11. In the case of the absence, disqualification, or incapacity of the Judge of the Probate Court No. 3 of Harris County, the County Judge of Harris County or the Judge of the Probate Court No. 1 of Harris County or the Judge of the Probate Court No. 2 of Harris County, may sit and act as judge of said court, and may hear and determine, either in his own courtroom or in the courtroom of said court, any matter or proceeding there pending, and enter any order in such matters or proceedings as the judge of said court may enter if personally presiding therein.

Sec. 12. In case of the absence, disqualification, or incapacity of the Judge of the Probate Court No. 1 of Harris County, the Judge of the Probate Court No. 2 of Harris County, the Judge of the Probate Court No. 3 of Harris County, or the County Judge of Harris County, a special judge of the Probate Court No. 1 of Harris County or of the Probate Court No. 2 of Harris County or of the Probate

Court No. 3 of Harris County, as the need may demand, may be appointed or elected, as provided by the general laws relating to county courts and to the judges thereof.

Sec. 13. The County Clerk of Harris County shall be the Clerk of the Probate Court No. 3 of Harris 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 No. 3 of Harris County, Texas," and said seal shall be judicially noticed. The Sheriff of Harris County shall, in person or by deputy, attend the court when required by the judge thereof.

Sec. 14. The Judge of the Probate Court No. 3 of Harris County shall collect the same fees as are now or hereafter established by law relating to county judges or to matters within the jurisdiction of said court, all of which shall be paid by him into the county treasury as collected. He may receive an annual salary equal to the salary of the judges of the Probate Courts Nos. 1 and 2 of Harris County, Texas, and payable in like manner.

Sec. 15. The provisions of this Act shall take effect September 1, 1977.
[Acts 1977, 65th Leg., p. 1145, ch. 434, §§ 1 to 15, eff. Sept. 1, 1977.]

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. [Added by Acts 1975, 64th Leg., p. 928, ch. 346, § 1, eff. Jan. 1, 1976.]

Section 2 of the 1975 Act provided:

"The provisions of this Act shall take effect on January 1, 1976."

Art. 1970-110f. County Civil Court at Law No. 4 of Harris County

(a) There is hereby created one court to be held in Harris County, Texas, to be called the "County Civil Court at Law No. 4 of Harris County, Texas." The seal of the court shall be the same as provided by law for county courts, except the seal shall contain the words "County Civil Court at Law No. 4."

(b) The county civil court at law of Harris County created in this Act shall have the same jurisdiction over civil matters, proceedings, and cases that is now or may be vested in the County Civil Courts at Law Nos. 1, 2, and 3 and shall have jurisdiction in civil actions, and the judge thereof exercises equal administrative and ministerial jurisdiction in matters of the filing and disposition of proceedings in eminent domain, concurrently and coextensively with the judge presiding in County Civil Court at Law No. 1 and the judge presiding in County Civil Court at Law No. 2 and the judge presiding in County Civil Court at Law No. 3, under the constitution and laws of Texas. The court created in this Act shall have appellate jurisdiction likewise in appeals of civil cases from the justice courts within Harris County. The judge of this court shall have the same powers, rights, and privileges as to civil matters as are or may be vested in the judges of county courts having civil jurisdiction, except that the court created in this Act 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) The county civil court at law of Harris County created in this Act shall have jurisdiction in all civil matters and causes, original and appellate, except probate matters, over which, by the constitution and general laws of the State of Texas, the county court of the county would have formerly had jurisdiction, and shall have equal and like jurisdiction over civil cases and civil proceedings in the same manner as jurisdiction has been heretofore exercised in civil cases and civil proceedings and in eminent domain by the County Civil Courts at Law Nos. 1, 2, and 3. The County Civil Courts at Law Nos. 1, 2, 3, and 4 shall have special jurisdiction in matters of eminent domain, and the judges thereof shall have sole administrative and ministerial jurisdiction to file and dispose of proceedings in eminent domain concurrently and coextensively when filed in either of these civil courts or with the respective judges thereof.

(d) The terms of the county civil court at law of Harris County created in this Act and the practice therein and appeals and writs of error therefrom shall be as prescribed by laws relating to county courts. The terms of the Harris County civil court at law created in this Act for civil cases shall be held as now established for the terms of the County Civil Courts at Law Nos. 1, 2, and 3 of Harris County until the same be changed in accordance with the law.

The court created in this Act shall hold six terms a year, beginning respectively on the first Monday in January, in March, in May, in July, in September, and in November of each year, and each term shall continue until the business is disposed of.

(e) As soon as practicable after this Act becomes effective, the Commissioners Court of Harris County shall appoint a judge to the county civil court at law of Harris County created in this Act, who shall have the qualifications herein prescribed and shall serve until the next general election and until his successor 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 civil courts at law of Harris County created in this Act 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. The judge shall be compensated as provided by law and shall be paid out of the county treasury by the commissioners court in equal monthly installments. A vacancy occurring in the office of a judge of the Harris County civil court at law created in this Act 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.

(f) The judge of the Harris County civil court at law created in this Act shall execute a bond and take the oath of office as required by the law relating to county judges.

(g) A special judge of the Harris County civil court at law created in this Act may be appointed or elected as provided by law relating to county courts and to the judges thereof.

(h) The County Clerk of Harris County shall be the clerk of the Harris County civil court at law created in this Act. The Sheriff of Harris County shall, in person or by deputy, attend the court when required by the judge thereof.

The county clerk shall keep separate dockets for each of the County Civil Courts Nos. 1, 2, 3, and 4 and shall tax the official court reporter's fee as costs in civil actions filed in each of these courts in like

manner as the fee is taxed in civil cases in the district courts.

Beginning as soon as practicable after the effective date of this Act, the county clerk shall file all civil cases and civil proceedings exclusively in the County Civil Courts at Law Nos. 1, 2, 3, and 4 and shall file the civil cases alternately in each of these courts as presented for filing.

(i) In case of disqualification, an overcrowded docket, sickness, or absence from the county of any of the judges of the County Civil Courts at Law Nos. 1, 2, 3, and 4 or county criminal courts at law, any other judge of these courts may exchange benches with any other county court at law judge of Harris County, and when so exchanging benches with any other of the county court at law judges of Harris County, the judge of the county civil court at law of Harris County created in this Act shall have all power and jurisdiction of the county civil or county criminal courts at law, and of the judge thereof, while so exchanging benches. In like manner, the judges of the county civil or criminal courts at law of Harris County shall have all the power and jurisdiction of any other of these civil or criminal county courts at law, and of the judges thereof, while so exchanging benches, and may sign orders, judgments and decrees, or other process as "Judge Presiding" when acting for the disqualified or absent judge upon request or in an emergency or for good cause shown.

(j) The judge of the county civil court at law of Harris County created in this Act may appoint and discharge an official court reporter in the same manner as such a reporter is appointed or discharged by the district courts. An official court reporter shall receive the same salary as the reporters of the district courts of Harris County, to be paid by the county treasurer out of the general fund of the county, and in addition to the salary shall receive the compensation for transcript fees as provided by law. [Acts 1977, 65th Leg., p. 1152, ch. 437, § 1, eff. Jan. 1, 1978.]

Section 2 of the 1977 Act provided: "This Act takes effect on January 1, 1978."

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.]

Art. 1970-141.3 County Court at Law No. 4 of El Paso County

Sec. 1. There is created a County Court at Law in El Paso County, to be known and designated as the "County Court at Law No. 4 of El Paso County, Texas."

Sec. 2. The County Court at Law No. 4 of El Paso County shall have the same jurisdiction over criminal matters that is now or may be vested in county courts having jurisdiction in criminal actions and proceedings under the constitution and laws of Texas, and shall have appellate jurisdiction in appeals in criminal cases from justice courts and municipal courts within El Paso County. The judge of the court shall have the same powers, rights, and privileges as to criminal matters as are or may be vested in the judges of county courts having criminal jurisdiction. The County Court at Law No. 4 of El Paso County shall have the same jurisdiction and powers in criminal matters and civil actions or proceedings that are now or may be vested in the County Courts at Law Nos. 1, 2, and 3 of El Paso County. The judge of each of the county courts at law may with the consent of the judge of the court to which transfer is to be made, transfer civil or criminal actions or proceedings from his respective court to the other court by the entry of an order to that effect on the docket. The judges of the County Courts at Law Nos. 1, 2, and 3 of El Paso County shall transfer to the County Court at Law No. 4 of El Paso County any civil or criminal action or proceeding pending on the docket of the court on the effective date of this Act as may be necessary in order that the now overcrowded dockets of the courts may be relieved, and the County Court at Law No. 4 of El Paso County, and the judge thereof, shall have jurisdiction to hear and determine civil or criminal matters, and render and enter the necessary and proper orders, decrees, and judgments therein. No cause may be transferred without the consent of the judge of the court to which it is transferred.

Sec. 3. (a) The county courts at law of El Paso County shall have the general jurisdiction of probate courts within the limits of El Paso County concur-

rent with jurisdiction of the County Court of El Paso County in such matters and proceedings. The county courts at law shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and drunkards, grant letters testamentary and of administration, settle accounts with administrators, executors, and guardians, transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and drunkards, including the settlement, partition, and distribution of estates of deceased persons, and the apprenticing of minors as provided by law, and conduct lunacy proceedings. The county courts at law shall have no jurisdiction over any other of those matters which are now vested exclusively in the County Court of El Paso County, or in the judge therein.

(b) The judges of the County Court of El Paso County and the county courts at law of El Paso County may, with the consent of the judge of the court to which transfer is to be made, transfer probate matters or proceedings from his respective court to the other court by the entry of an order to that effect on the docket.

(c) The judges of the county court and the county courts at law may collectively make and publish rules from time to time governing the docketing and disposition of probate matters and proceedings in their courts not inconsistent with the laws of the State of Texas or the Texas Rules of Civil Procedure and for the purpose of efficient and justiciable disposition of probate matters and proceedings. A copy of the rules and changes shall be filed with the County Clerk of El Paso County, and one copy of the rules and changes shall be available in each court for the examination of participants in any probate matters filed.

(d) The County Court of El Paso County and the county courts at law of El Paso County, or each of the judges thereof, have the power to issue writs of injunction, sequestration, attachment, garnishment, certiorari, supersedeas, and all other writs necessary to the enforcement of the jurisdiction of the courts, and also have the power to punish for contempt under such provisions as are or may be provided by the general laws governing county courts throughout the state, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the courts or of any court or tribunal inferior to the courts.

Sec. 4. (a) The terms of the county courts at law of El Paso County shall commence on the first Monday in January and July and the courts may continue in session until the Sunday next preceding the Monday for the convening of the next regular term of court.

(b) The judges of the county courts at law of El Paso County may divide each term of court into as many sessions as they deem necessary for the disposition of business, and may extend a particular term of court whenever practicable for the efficient and justiciable disposition of individual proceedings and matters.

Sec. 5. (a) The judge of each county court at law of El Paso County shall be a citizen of the United States and of this state, who shall have been a practicing attorney of this state for at least five years next preceding his election or appointment and who shall have resided in the County of El Paso for at least two years next preceding his election or appointment.

(b) The judge of the County Court at Law No. 4 of El Paso County may receive an annual salary to be fixed by the commissioners court. The salary may 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.

Sec. 6. When this Act becomes effective, the Commissioners Court of El Paso County shall appoint a judge of the County Court at Law No. 4 of El Paso County who shall serve until the next general election and until his successor is elected and has qualified. Beginning at the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of the county a judge of the County Court at Law No. 4 for a regular term of four years as provided by the Texas Constitution. In case of vacancy, the office shall be filled by appointment by the commissioners court, and the appointee shall hold office until the next succeeding general election and until his successor is elected and has qualified.

Sec. 7. The judge of the County Court at Law No. 4 of El Paso County shall execute bond and take the oath of office as required by law relating to county judges.

Sec. 8. The judge of the County Court at Law No. 4 of El Paso County shall appoint an official court 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. All of the provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended, and as hereafter amended, and all other provisions of the law relating to official court reporters, shall apply in all their provisions, insofar as they are

applicable, to the official court reporter herein authorized to be appointed, and insofar as they are not inconsistent with the provisions of this Act. The official court reporter shall be entitled to the same compensation as the official court reporters in the district courts of El Paso County, to be paid in the same manner that compensation of official court reporters of the district courts of El Paso County is paid.

Sec. 9. The county clerk of El Paso County shall be the clerk of the County Court at Law No. 4 of El Paso County in civil and criminal matters. The county clerk shall receive and collect the same fees which he now receives and collects as clerk of the County Courts at Law Nos. 1, 2, and 3 of El Paso County. The clerk shall keep separate dockets for each court and shall tax the official court reporter's fee as costs in civil actions in each court in like manner as the fee is taxed in civil cases in the district courts.

Sec. 10. The sheriff of El Paso County, either in person or by deputy, shall attend the court when required by the judge. The various sheriffs and constables of this state executing process issued out of this court shall receive the fees now or hereafter fixed by law for executing process issued out of county courts.

Sec. 11. The seal of the County Court at Law No. 4 of El Paso County shall be the same as that provided by law for county courts, except that the seal shall contain the words "County Court at Law No. 4 of El Paso County, Texas," and the seal shall be judicially noticed.

Sec. 12. A special judge of the court may be appointed or elected in the manner and instances now or hereafter provided by law relating to county courts and judges thereof.

Sec. 13. (a) The judges of the county courts at law of El Paso County shall have the power to make and publish rules as to the docketing and disposition of criminal and civil cases in their courts not inconsistent with the laws of the State of Texas or the Texas Rules of Civil Procedure.

(b) The judges of the county courts at law of El Paso County with mutual consent may exchange benches with one another or act as presiding judge of the other courts in individual proceedings or actions in the absence or disqualification of the other judge.

Sec. 14. In cases transferred to any one of the county courts at law by order of the judge of one of the other county courts at law, all process extant at the time of the 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 the transfer is made. [Acts 1977, 65th Leg., p. 1493, ch. 607, §§ 1 to 14, eff. Aug. 29, 1977.]

McLENNAN COUNTY

Art. 1970-298d. County Court at Law No. 2 of McLennan County

Sec. 1. The County Court at Law No. 2 of McLennan County is created on the date determined by the provisions of Section 11 of this Act.

Sec. 2. (a) The County Court at Law No. 2 of McLennan County has jurisdiction in all matters and causes, civil, criminal, and probate, original and appellate, over which by the general laws and constitution of the state the county court of the county would have jurisdiction, and its jurisdiction is concurrent with that of the County Court of McLennan County and the County Court at Law of McLennan County. This provision does not affect the jurisdiction of the commissioners court, or of the county judge of McLennan County as the presiding officer of the commissioners court, as to roads, bridges, and public highways, and matters that are now within the jurisdiction of the commissioners court or the county judge as presiding officer. The county judge of McLennan County shall be the judge of the County Court of McLennan County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of McLennan County, except insofar as the same shall by this Act be committed to the judge of the County Court at Law No. 2 of McLennan County.

(b) The County Court at Law No. 2 of McLennan 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. 3. The County Court at Law No. 2 of McLennan County or its judge has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, and supersedeas, and all writs necessary to the enforcement of the jurisdiction of the court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court or tribunal inferior to that court. The court and judge have the power to punish for contempt as prescribed by law for county courts.

Sec. 4. (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) The county judge and the judges of the county courts 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 in a 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.

(c) 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 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. 5. The terms of the County Court at Law No. 2 of McLennan County shall be held on the first Mondays in January, March, May, July, September, and November in each year, and each term of the court shall continue in session until and including the Saturday next preceding the beginning of the next succeeding term. The practice in the court, and appeals and writs of error therefrom, shall be as prescribed by the laws relating to county courts.

Sec. 6. Regardless of whether the court is created prior to January 1, 1979, beginning at the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters in McLennan County, for a term beginning on January 1 following each election, a judge of the County Court at Law No. 2 of McLennan County, who shall be a qualified voter in the county, who shall be a regularly licensed attorney at law in this state, who shall be well informed in the laws of this state, who shall have resided in and been actively engaged in the practice of law in this state or as the judge of a court for a period of not less than five years next preceding such general election, and who shall hold his office until his successor shall have been duly elected and qualified.

Sec. 7. The judge of the County Court at Law No. 2 of McLennan 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 McLennan County may be appointed or elected when and under such circumstances as are provided by law relating to county courts and to the judges thereof, who shall receive for each day he actually serves the same compensation as provided for a special judge of the County Court at Law of McLennan County, to be paid out of the general fund of the county by the commissioners court.

Sec. 9. The clerk of the County Court of McLennan County shall be the clerk of the County Court at Law No. 2 of McLennan 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 "Clerk of the County Court at Law No. 2 of McLennan County." The sheriff of McLennan County shall in person or by deputy attend the court when required by the judge thereof.

Sec. 10. (a) The judge of the County Court at Law No. 2 of McLennan County is authorized to appoint an official shorthand reporter for the court. A person is eligible for appointment who is well skilled in his profession. On appointment the reporter is to serve as a sworn officer of the court, holding his office at the pleasure of the court.

(b) The reporter is not required to take testimony in a case unless a party to the case or the judge demands that testimony be taken. In cases in which the reporter is required to take testimony, the court clerk shall tax a \$3 fee as costs in the case. The clerk shall deposit fees collected under this section in the treasury of McLennan County. The reporter shall be available for matters being considered in the county court if a reporter is requested by the litigants before that court and the request is approved by the judge of the County Court at Law No. 2 of McLennan County.

(c) The reporter may receive the same compensation as the official shorthand reporters of the district courts in McLennan County, which compensation is to be paid in the same manner as is the compensation of the official shorthand reporters of the district courts in McLennan County. The county judge, the county auditor, the commissioners court, and any other officials of McLennan County charged with preparing and approving the county budget are authorized to amend the budget of McLennan County to provide for paying compensation to the reporter.

(d) Except where inconsistent with this Act, all general laws relating to court reporters apply to the official court reporter of the County Court at Law No. 2 of McLennan County.

Sec. 11. Any vacancy in the office of the judge of the court created by this Act shall be filled by the Commissioners Court of McLennan County until the next general election. The County Court at Law No. 2 of McLennan County is created on January 1, 1979, or on a date determined by the commissioners court by an order entered in its minutes, whichever date is earlier. If the court is created prior to January 1, 1979, the commissioners court shall appoint a judge of the County Court at Law No. 2 of McLennan County, who shall serve for a term ending on December 31, 1978, and until his successor is duly elected and has qualified.

Sec. 12. The judge of the County Court at Law No. 2 of McLennan County shall assess the same fees as are or may be established by law relating to county judges, all of which shall be collected by the clerk of the court and be paid monthly by him into the county treasury, and the judge of the County Court at Law No. 2 of McLennan County may receive an annual salary equal to the annual salary of the judge of the County Court at Law of McLennan County, payable monthly out of the county treasury by the commissioners court.

[Acts 1977, 65th Leg., p. 1007, ch. 373, §§ 1 to 12, eff. Aug. 29, 1977.]

BEXAR COUNTY

1970-301h. Repealed by Acts 1977, 65th Leg., p. 187, ch. 93, § 2, eff. May 2, 1977

See, now, § 8(c) of Art. 3883i.

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

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 jurisdiction 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 to 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 re-

turnable 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 execu-

tors, 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 partition, 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 may receive a salary of Thirty 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; Acts 1977, 65th Leg., p. 1611, ch. 629, § 1, eff. June 15, 1977.]

Sections 5 and 6 of the 1977 Act provide as follows;

"Sec. 5. The provisions of this Act shall be severable. Should any section, paragraph, sentence, clause, or other part hereof, be declared for any reason unconstitutional or void, such declaration shall not affect or impair the remaining provisions hereof, and the legislature specifically declares that it would have passed this Act notwithstanding the absence of such portion as may be declared unconstitutional or void."

"Sec. 6. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict."

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 may receive a salary of Thirty 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 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.

[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; Acts 1977, 65th Leg., p. 1611, ch. 629, § 2, eff. June 15, 1977.]

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 may receive an annual salary of Thirty Thousand Dollars. 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. 3 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; Acts 1977, 65th Leg., p. 1611, ch. 629, § 3, eff. June 15, 1977.]

LUBBOCK COUNTY

Art. 1970-340. County Court at Law No. 1 Lubbock County

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

Sec. 2. The County Court at Law No. 1 of Lubbock County, Texas, shall have and exercise jurisdiction in all matters and causes, civil and criminal,

original and appellate, over which by the General Laws of the State, the County Court of said County would have jurisdiction, and the County Court at Law No. 1 shall have and exercise jurisdiction as to all probate matters concurrently with the County Court and any other numbered County Court at Law of Lubbock County. The County Court at Law No. 1 has jurisdiction concurrently with the district court in eminent domain cases, as provided by general law; but this provision shall not affect the jurisdiction of the Commissioners Court or of the County Judge of Lubbock County as the presiding officers of such Commissioners Court, as to roads, bridges, and public highways, and matters of eminent domain which are now in the jurisdiction of the Commissioners Court or the Judge thereof.

[See Compact Edition, Volume 3 for text of 3 to 5]

Sec. 6. The County Court of Lubbock County shall have and retain the general jurisdiction of the Probate Court concurrently with the County Courts at Law of Lubbock County; but the County Court now existing shall have no jurisdiction over other matters, civil or criminal. The County Judge of Lubbock County shall be the Judge of the County Court of said County, and all ex-officio duties of the County Judge shall be exercised by said Judge of the County Court of Lubbock County, except in so far as the same shall by this Act be committed to the County Court at Law No. 1 of Lubbock County.

[See Compact Edition, Volume 3 for text of 7 to 27]

[Amended by Acts 1977, 65th Leg., p. 1276, ch. 498, § 1, eff. Aug. 29, 1977.]

Art. 1970-340.1. County Court at Law No. 2 of Lubbock County

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

Sec. 2. The County Court at Law No. 2 of Lubbock County, Texas, shall have and exercise jurisdiction in all matters and causes, civil and criminal, original and appellate, over which by the General Laws of the State, the County Court of said County would have jurisdiction, and the County Court at Law No. 2 shall have and exercise jurisdiction as to all probate matters concurrently with the County Court and any other numbered County Court at Law of Lubbock County. The County Court at Law No. 2 has jurisdiction concurrently with the district court in eminent domain cases, as provided by general law; but this provision shall not affect the jurisdiction of the Commissioners Court or of the County Judge of Lubbock County as the presiding officers of such Commissioners Court, as to roads, bridges, and public highways, and matters of eminent domain which are now in the jurisdiction of the Commissioners Court or the Judge thereof.

[See Compact Edition, Volume 3 for text of 3 to 6]

Sec. 7. The County Court of Lubbock County shall have and retain the general jurisdiction of the Probate Court concurrently with the County Courts at Law of Lubbock County; but the County Court now existing shall have no jurisdiction over other matters, civil or criminal. The County Judge of Lubbock County shall be the Judge of the County Court of said County, and all ex officio duties of the County Judge shall be exercised by said Judge of the County Court of Lubbock County, except in so far as the same shall by this Act be committed to the County Court at Law No. 2 of Lubbock County.

[See Compact Edition, Volume 3 for text of 8 to 21]

Sec. 22. After the effective date of this amendment, the Judge of the County Court of Lubbock County and the Judge of the County Court at Law No. 2 of Lubbock County shall receive an annual salary in an amount not less than three-fourths (¾) of the total annual salary paid to the Judge of the 99th Judicial District of Texas by the State of Texas. This sum shall be paid in equal monthly installments out of the General Fund of Lubbock County on orders from Commissioners Court.

[See Compact Edition, Volume 3 for text of 23 to 27]

[Amended by Acts 1977, 65th Leg., p. 1276, ch. 498, § 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1317, ch. 522, § 1, eff. Aug. 29, 1977.]

HIDALGO COUNTY

Art. 1970-341. County Court at Law of Hidalgo County

[See Compact Edition, Volume 3 for text of 1 to 4]

Sec. 5. The County Court at Law of Hidalgo County shall sit in the County seat of Hidalgo County and shall hold continuous terms which 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. The practice in said Court, and appeals and writs of error thereto and therefrom, shall be as prescribed by the laws and rules relating to County Courts.

[See Compact Edition, Volume 3 for text of 6 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; Acts 1977, 65th Leg., p. 227, ch. 110, § 1, eff. May 4, 1977.]

Art. 1970-341a. County Court at Law No. 2 of Hidalgo County

Sec. 1. There is created a court to be held in and for Hidalgo County, which shall be known as the County Court at Law No. 2 of Hidalgo County, and which shall be a court of record.

Sec. 2. (a) The County Court at Law No. 2 of Hidalgo County shall have and exercise jurisdiction in all matters and causes civil and criminal, original and appellate, over which by the general laws of the state, the county courts have jurisdiction, and shall have jurisdiction concurrent with the County Court at Law of Hidalgo County in matters and cases, civil and criminal, original and appellate. The county court at law does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways or the general administration of county business which is within the jurisdiction of the commissioners court or the presiding judge of the commissioners court.

(b) The County Court at Law No. 2 of Hidalgo 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. 3. The County Court at Law No. 2 of Hidalgo County shall also have the general jurisdiction of a probate court within the limits of Hidalgo County, concurrent with jurisdiction of the County Court of Hidalgo County and the County Court at Law of Hidalgo County in such matters and proceedings. The County Court at Law No. 2 of Hidalgo County 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, the apprenticing of minors as provided by law, and conduct lunacy proceedings.

Sec. 4. The County Court of Hidalgo County shall have and retain concurrently with the County Court at Law of Hidalgo County and the County Court at Law No. 2 of Hidalgo County the general jurisdiction of a probate court and of jurisdiction now conferred or which may be conferred by law over probate matters but shall have no other jurisdiction criminal or civil, original or appellate. The County Judge of Hidalgo County shall be the judge of the County Court of Hidalgo County and all ex officio, executive, ministerial, and administrative duties of the County Judge of Hidalgo County shall continue to be exercised by the County Judge of Hidalgo County, but he shall not act in any proceeding of a judicial nature save in probate matters.

Sec. 5. The County Court at Law No. 2 of Hidalgo County shall sit in the county seat of Hidalgo County and shall hold continuous terms which 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. The practice in the court and appeals and writs of error to and from the court shall be as prescribed by the laws and rules relating to county courts.

Sec. 6. There shall be elected in Hidalgo County, by the qualified voters of the county, a judge of the County Court at Law No. 2, who shall be a regularly licensed attorney at law in this state, and who shall be a resident citizen of Hidalgo County, and who shall have been actively engaged in the practice of law in this state for a period of not less than four years next preceding his election, and who shall hold his office for four years and until his successor shall have been duly elected and qualified. As soon as this Act becomes effective, the Commissioners Court of Hidalgo County shall appoint a judge to the County Court at Law No. 2 of Hidalgo County, who shall hold this office as judge until the next general election and until his successor is elected and qualified. Beginning at the general election in 1978 and every fourth year thereafter, there shall be elected 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. A vacancy in the office of the judge of the County Court at Law No. 2 of Hidalgo County, shall be filled by appointment of the Commissioners Court of Hidalgo County, and when so filled, the judge shall hold his office until the next general election and until his successor is elected and qualified.

Sec. 7. The judge of the County Court at Law No. 2 shall execute a bond and take the oath of office as required by law relating to county judges.

Sec. 8. (a) A special judge of the County Court at Law No. 2 of Hidalgo County may be appointed

or elected as provided by law relating to county courts and to the judges thereof, who shall be compensated in the same manner as provided for special judges of the county courts.

(b) 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. 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.

(c) The county judge and the judges of the county courts 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. Any judge may hear all or any part of a case pending in the county court or a 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 any 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 judges of the county courts 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. 9. The judge of the County Court at Law No. 2 of Hidalgo County may be removed from office in the same manner and for the same causes as provided by law for county judges.

Sec. 10. The judge of the County Court at Law No. 2 shall appoint an official shorthand reporter for the court who shall be well skilled in his profession, shall be a sworn officer of the court, and shall hold

office at the pleasure of the judge. The duties of the 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 \$3. The fee shall be paid as other costs in the case and paid by the clerk, when collected, into the general fund of the county.

Sec. 11. (a) The judge of the County Court at Law No. 2 of Hidalgo County may receive an annual salary, the amount of which shall be fixed by the Commissioners Court of Hidalgo County. The salary shall be paid in the same manner and from the same fund as prescribed by law for payment of the salary of the County Judge of Hidalgo County.

(b) 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.

Sec. 12. The official interpreter of the district courts of Hidalgo County shall serve as official interpreter of the County Court at Law No. 2 of Hidalgo County, but if the official interpreter is not available when needed for service in the County Court at Law No. 2, the judge of that court is authorized to appoint an interpreter who shall serve only temporarily and who shall be paid not to exceed \$5 per day out of the general fund of the county on certificate of the judge. On concurrence of the county commissioners court, the judge of the County Court at Law No. 2 may appoint an official interpreter for the court as provided by general law.

Sec. 13. The County Court at Law No. 2 of Hidalgo 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, and to punish for contempt under such provisions as are or may be provided by general laws governing county courts. The judge shall have all other powers, duties, immunities, and privileges as are or may be provided by general law for judges of courts of record and for judges of county courts at law, and he shall be a magistrate and a conservator of the peace.

Sec. 14. The county clerk of Hidalgo County shall be the clerk of the County Court at Law No. 2 of Hidalgo County, and as clerk of the court, he shall have the same powers, duties, privileges, and immunities as provided by law for county clerks. 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 Hidalgo County, Texas."

Sec. 15. The sheriff of Hidalgo County shall in person or by deputy attend the County Court at Law No. 2 when required by the judge.

Sec. 16. The jurisdiction and authority now vested by law in the County Court at Hidalgo 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 and the judge thereof; but 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 either of the other courts for service therein and may be used therein as if summoned for the court to which they may thus be transferred. Upon concurrence of the judges of the county courts at law and the county judge, jurors may be summoned for service in all of those courts and shall be used interchangeably in all of those courts.

Jurors regularly impaneled for the week by the district court or courts may on request of either the county judge or the judge of either of the county courts at law be made available by the district judge or judges in such numbers as may be requested for service for the week in either or all of the county courts at law or the county court, and such jurors shall serve in the county court and county court at law the same as if they had been drawn and selected as is otherwise provided by law.

[Acts 1977, 65th Leg., p. 259, ch. 123, §§ 1 to 16, eff. May 10, 1977.]

GALVESTON COUNTY

Art. 1970-342. Probate and County Court of Galveston County

[See Compact Edition, Volume 3 for text of 1 and 1a]

Sec. 1b. (a) The name of the Probate Court of Galveston County is changed to the "Probate and County Court of Galveston County," and the seal of the court shall contain the words "Probate and County Court of Galveston County."

(b) In addition to all other jurisdiction granted by law to the Probate and County Court of Galveston County, the court 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.

(c) The judge of the Probate and County Court of Galveston County shall appoint an official shorthand reporter for the Probate and County 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. All of the provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended, and all other applicable provisions of the law relating to "official court reporters" shall apply to the official shorthand reporter herein authorized to be appointed. The official shorthand reporter shall be entitled to the same compensation, to be paid in the same manner, as provided for the official shorthand reporters of the district courts of Galveston County. The court reporter shall be required primarily to report cases in the Probate and County Court of Galveston County but may be made available, when not engaged in a jury trial in that court, to report jury trials in the County Court of Galveston County and to the district attorney for examining trials in justice courts.

[See Compact Edition, Volume 3 for text of 2 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; Acts 1977, 65th Leg., p. 277, ch. 133, § 16, eff. Sept. 1, 1977.]

Art. 1970-342a. County Court No. 1 of Galveston County

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

Sec. 2.

[See Compact Edition, Volume 3 for text of 2(a) and (b)]

(c) In addition to the other jurisdiction granted in this section, the County Court No. 1 of Galveston 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.

[See Compact Edition, Volume 3 for text of 3 to 6]

Sec. 7. The judge of the County Court No. 1 of Galveston County shall appoint an official shorthand reporter for the County Court No. 1, 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. All of the provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended, and all other applicable provisions of the law relating to "official court reporters" shall apply to the official shorthand reporter herein authorized to be appointed. Such official shorthand reporter shall be entitled to the same compensation, to be paid in the same manner, as provided for the official shorthand reporters of the district courts of Galveston County, Texas. Said court reporter shall be required primarily to report cases in the County Court No. 1 of Galveston County, but may be made available, when not engaged in a jury trial in said court, to report jury trials in the Probate and County Court of Galveston County.

[See Compact Edition, Volume 3 for text of 8 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.

Sec. 12. A special judge may be appointed or elected for the County Court No. 1 of Galveston County in the same manner as may now or hereafter be provided by the General Laws of this state relating to the appointment and election of special judges. Every such special judge thus appointed or elected for said court shall receive for the services he may actually perform the same amount of pay which the regular judge of said court would be entitled to receive for such services.

[See Compact Edition, Volume 3 for text of 13 and 14]

[Amended by Acts 1975, 64th Leg., p. 1332, ch. 496, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 278, ch. 133, §§ 17, 18, eff. Sept. 1, 1977.]

Art. 1970-342b. County Court No. 2 of Galveston County

Sec. 1. There is created on the effective date of this Act a court to be held in Galveston County to be known as the "County Court No. 2 of Galveston County."

Sec. 2. (a) The County Court No. 2 of Galveston County shall have the same jurisdiction over criminal matters that is now or may be vested in county courts having jurisdiction in criminal actions, matters, and proceedings under the constitution and laws of Texas and shall have appellate jurisdiction in all appeals in criminal cases from justice courts and municipal courts within Galveston County. The judge of the court shall have the same powers, rights, and privileges as to criminal matters as are now or may be vested in the judges of county courts having criminal jurisdiction.

(b) The County Court No. 2 of Galveston County shall have the same jurisdiction and powers in civil actions, matters, and proceedings that are now or may be conferred by law upon and vested in the County Court of Galveston County, the County Court No. 1, the Probate and County Court of Galveston County, and the judges thereof. The jurisdiction of the County Court of Galveston County, the Probate and County Court, and the County Courts Nos. 1 and 2 of Galveston County over all such actions, matters, and proceedings, civil and criminal, within Galveston County shall be concurrent.

(c) In addition to the other jurisdiction granted in this section, the County Court No. 2 of Galveston 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.

Sec. 3. (a) Criminal cases shall be filed and docketed sequentially in the County Court No. 1 of Galveston County and the County Court No. 2 of Galveston County. Civil cases shall be filed and docketed sequentially in the County Court No. 1, the County Court No. 2, and the Probate and County Court of Galveston County. Upon the effective date of this Act, the civil cases now filed and docketed in County Court No. 1 shall be refiled in an equal and proportionate manner among the County Court No. 1, the County Court No. 2, and the Probate and County Court of Galveston County. The criminal cases now filed and docketed in County Court No. 1 shall be refiled in an equal and proportionate manner between County Court No. 1 and County Court No. 2.

(b) Probate matters, mental illness cases, alcoholism hearings, and condemnation cases shall continue to be filed and docketed in the County Court of Galveston County and the Probate and County Court of Galveston County in the same manner as they have been heretofore filed and docketed, except as may otherwise be agreed upon by consent of all judges of the county courts of Galveston County and the county probate court.

Sec. 4. The clerk of the County Court No. 2 of Galveston County shall keep a separate docket for the court in the same manner as now or may be provided by law for the keeping of dockets for the County Court of Galveston County and the County Court No. 1 and the Probate and County Court of Galveston County. He shall tax the official court reporter's fee as costs in civil actions in the County Court No. 2 of Galveston County in like manner as the fee is taxed in civil cases in the district courts of this state. The judge of the County Court of Galveston County and the judges of the Probate and County Court and the County Courts Nos. 1 and 2 of Galveston County may, with the consent of the judge of the court to which transfer is to be made, transfer civil or criminal actions, matters, and proceedings from his respective court to any one of the other courts by entry of an order to that effect upon the docket of his court. The judge of the court to which any such action, matter, or proceeding, civil or criminal, shall have been transferred shall have jurisdiction to hear and determine the matter or matters and render and enter the necessary and proper orders, decrees, and judgments therein, and in the same manner and with the same force and effect as if the case, action, matter, or proceeding had been originally filed in the court to which transferred. However, no cause, action, matter, case, or proceeding shall be transferred without the consent of the judge of the court to which it is transferred.

Sec. 5. The judge of the County Court No. 2 of Galveston County, together with the judges of the County Court of Galveston County, the County Court No. 1, and the Probate and County Court of Galveston County, may at any time exchange benches and may at any time sit and act for and with each other in any civil or criminal case, matter, or proceeding now or hereafter pending in their courts, and all such acts thus performed by any of the judges shall be valid and binding on all parties to such cases, matters, and proceedings.

Sec. 6. The practice in the County Court No. 2 of Galveston County shall be the same as prescribed by law relating to county courts and county courts at law. Appeals and writs of error may be taken from judgments and orders of the County Court No. 2 of Galveston County, and from judgments and orders of the judge thereof, in civil and criminal cases and in the same manner as now is or may hereafter be prescribed by law relating to such appeals and writs of error. Appeals may also be taken from interlocutory orders of the County Court No. 2 of Galveston County appointing a receiver or from orders overruling a motion to vacate or appointing a receiver. The procedure and manner in which the appeals from interlocutory orders are taken shall be governed by the laws relating to appeals from similar orders of the district courts throughout this state.

Sec. 7. The judge of the County Court No. 2 of Galveston County shall appoint an official shorthand reporter for the County Court No. 2, 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. All of the provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended, and all other applicable provisions of the law relating to "official court reporters" shall apply to the official shorthand reporter herein authorized to be appointed. The official shorthand reporter shall be entitled to the same compensation, to be paid in the same manner, as provided for the official shorthand reporters of the district courts of Galveston County. The official shorthand reporter shall be required primarily to report cases in the County Court No. 2 of Galveston County but may be made available, when not engaged in a jury trial in that court, to report jury trials in the Probate and County Court of Galveston County.

Sec. 8. The county clerk of Galveston County shall be the clerk of the County Court No. 2 of Galveston County. The court shall have a seal consisting of a star of five points with the words "County Court No. 2 of Galveston County" engraved thereon. The sheriff of Galveston County shall appoint a deputy to attend the court when required by the judge.

Sec. 9. The criminal district attorney of Galveston County shall represent the state in all prosecutions in the County Court No. 2 of Galveston County as provided by law for prosecutions in county courts and shall be entitled to the same fees as in other cases.

Sec. 10. There shall be elected a judge of the County Court No. 2 of Galveston County, who shall have been a duly licensed and practicing member of the State Bar of Texas for not less than five years, who shall be well versed in the laws of the state and who shall have resided in and been actively engaged in the practice of law in Galveston County for a period of not less than four years prior to his election. When this Act becomes effective, the commissioners court shall appoint a judge of the County Court No. 2 of Galveston County, who shall have the qualifications prescribed in this section and who shall serve until the next general election and until his successor shall have been duly elected and have qualified. Beginning at the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of the county a judge of the County Court No. 2 for a regular term of four years as provided by the Texas Constitution. A vacancy thereafter occurring in the office of the judge of the County Court at Law No. 2 of Galveston County shall be filled by the Commissioners Court of Galveston County, and the appointee shall

hold office until the next succeeding general election and until his successor shall be duly elected and have qualified.

Sec. 11. (a) The judge of the County Court No. 2 of Galveston County shall take the oath of office prescribed by the constitution, but no bond shall be required of him.

(b) The Commissioners Court of Galveston County may fix the yearly salary of the judge of the County Court No. 2 of Galveston County at the same salary paid all judges of other county courts and the Probate and County Court of Galveston County. The salary shall be paid to each judge in equal monthly installments out of the General Fund of Galveston County by warrants drawn on the county treasury on orders of the Commissioners Court of Galveston County.

Sec. 12. A special judge may be appointed or elected for the County Court No. 2 of Galveston County in the same manner as may now or hereafter be provided by the general laws of this state relating to the appointment and election of special judges. Every special judge appointed or elected for the court shall receive for the services he may actually perform the same amount of pay which the regular judge of the court would be entitled to receive for such services.

Sec. 13. The County Court No. 2 of Galveston County, or the judge thereof, shall have power to grant all writs necessary to the enforcement of the jurisdiction of the court and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court in Galveston County of inferior jurisdiction to the County Court No. 2 of Galveston County.

Sec. 14. The County Court No. 2 of Galveston County shall hold six terms of court 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 is disposed of. No term of the court shall extend beyond the date fixed for the commencement of the succeeding term, except pursuant to an order entered on the minutes during the term to be extended.

Sec. 15. The judge of the County Court No. 2 shall be a member of the Juvenile Board of Galveston County and shall have the same jurisdiction over juvenile proceedings as the judges of the County Court No. 1, the Probate and County Court, and the Court of Domestic Relations for Galveston County, with juvenile proceedings filed sequentially in the County Court No. 1, the Probate and County Court,

the County Court No. 2, and the Court of Domestic Relations.

[Acts 1977, 65th Leg., p. 274, ch. 133, §§ 1 to 15, eff. Sept. 1, 1977.]

Sections 16 to 18 of the 1977 Act amended arts. 1970-342 and 1970-342a; § 19 thereof provided: "The provisions of this Act take effect on September 1, 1977."

SMITH COUNTY

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 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.]

PARKER COUNTY

Art. 1970-353. Parker County; Jurisdiction of County Court

Sec. 1. The County Court of Parker 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, lunatics, persons non compos mentis, and common drunkards, including the partition, settlement, and distribution of estates of deceased persons pending in such court; conduct lunacy hear-

ings; apprentice minors as provided by law, and issue all writs necessary for the enforcement of its own jurisdiction; punish for 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 Parker County and the judge thereof, shall have all original and appellate civil and criminal jurisdiction as normally exercised by county courts under the constitution and general laws of this state. All present and future statutes pertaining to probate matters and eminent domain enacted by the Legislature of the State of Texas shall be operative in Parker County as fully as though this statute had not been enacted.

Sec. 2. All concurrent jurisdiction between the County Court of Parker County and the 43rd District Court previously existing by authority of this article is hereby abolished.

Sec. 3. Jurisdiction over juvenile matters in Parker County shall be as established by the constitution and general laws of this state.

Sec. 4. The District Clerk of Parker County shall file, within 30 days after the effective date of this amendment, with the County Clerk of Parker County, all original papers in cases herein transferred to the County Court of Parker County and all judge's dockets and certified copies of any interlocutory judgment or other order entered in the minutes of the 43rd District Court in a case transferred. The county clerk shall immediately docket all such cases on the docket of the County Court of Parker County in the same manner and place as each stands on the docket of the district court. It shall not be necessary that the county clerk refile any papers heretofore filed by the district clerk, but papers in the case bearing the file mark of the district clerk prior to the time of the transfer shall be held to have been filed in the case as of the date filed without being refiled by the county clerk. The district clerk in cases so transferred shall accompany the papers with a certified bill of costs, and against all costs deposit, the district clerk shall charge accrued fees due the district clerk and the remainder of the deposit, if any, the district clerk shall pay to the county court as a deposit in the particular case for which the deposit was made. Credit shall be given all litigants for all jury fees paid in the district court.

Sec. 5. Repealed by Acts 1977, 65th Leg., p. 677, ch. 257, § 3, eff. May 25 1977.

[Amended by Acts 1977, 65th Leg., p. 676, ch. 257, § 1, eff. May 25, 1977.]

ANGELINA COUNTY

Art. 1970-355. County Court at Law of Angelina County

Sec. 1.

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

(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 Angelina County. The county court at law also has jurisdiction concurrent with the district court in eminent domain cases as provided by general law and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$10,000, exclusive of interest.

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

Sec. 4.

[See Compact Edition, Volume 3 for text of 4(a) to (c)]

(d) The judge of the county court at law shall receive a salary of not less than \$14,000 per year. 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 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.

[See Compact Edition, Volume 3 for text of 4(e) to 7]

[Amended by Acts 1977, 65th Leg., p. 1480, ch. 602, § 1, eff. Aug. 29, 1977; Acts 1977, 65th leg., p. 1727, ch. 688, § 14, eff. Aug. 29, 1977.]

VICTORIA COUNTY

Art. 1970-356. County Court at Law of Victoria County

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

Sec. 4.

[See Compact Edition, Volume 3 for text of 4(a) to (c)]

(d) The judge of the County Court at Law of Victoria County shall receive the same salary, to be paid from the same fund and in the same manner, as the County Judge of Victoria County. The Commissioners Court of Victoria County may provide traveling expenses, office expenses, and administrative and clerical help which it deems necessary.

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

Sec. 5.

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

(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 compensation fixed by the Commissioners Court of Victoria County.

[See Compact Edition, Volume 3 for text of 5(c) to 7]

[Amended by Acts 1977, 65th Leg., p. 1757, ch. 705, §§ 1, 2, eff. June 15, 1977.]

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

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 court-rooms 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. 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 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, 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.

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 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 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 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 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, 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 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 pre-

scribed 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 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 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.]

WALKER COUNTY

Art. 1970-367. County Court at Law of Walker County

Sec. 1. There is hereby created a county court at law in Walker County, Texas. It shall sit in Huntsville and shall be known as the County Court at Law of Walker County.

Sec. 2. The County Court at Law of Walker 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 Walker County. The county court at law has concurrent jurisdiction with the County Court of Walker 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 Walker 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 Walker County by the other provisions of this Act, the county court at law has concurrent civil jurisdiction with the district court of Walker 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 and marriage annulment cases, including the adjustment of property rights and custody and support of minor children involved therein, temporary support 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 district court in Walker County, and the district court shall retain and continue to exercise such jurisdiction as is now or may be hereafter conferred by law, and the jurisdiction given in this section is concurrent with the jurisdiction of the district court.

Sec. 4. The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, execution, 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 Walker County which is now performed by the County Judge of Walker County.

Sec. 5. The County Court of Walker 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 Walker County, except as provided by this Act or otherwise provided by law.

Sec. 6. The County Court at Law of Walker County shall hold four terms of court each year which terms 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. 7. (a) The judge of the county court at law shall have been a bona fide resident of Walker County for two years prior to his appointment or election and shall be a qualified voter in Walker 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 his 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 Walker County shall appoint a judge to the County Court at Law of Walker County. The judge appointed must have the qualifications prescribed in Subsection (a) of this section and shall serve until the general election in 1978 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 Walker County a judge of the County Court at Law of Walker 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 Walker 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 83 percent of the annual salary of the district judge in Walker County, to be paid by the county treasurer 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 Walker 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 County Attorney, County Clerk, and Sheriff of Walker County shall serve as county attorney, clerk and sheriff respectively of the County Court at Law of Walker County, except that the District Clerk of Walker County shall serve as clerk of the county court at law in the cases enumerated in Subsection (b), Section 3 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 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, which reporter shall serve at the pleasure of the judge of the county court at law. The official court reporter is entitled to the compensation fixed by the Commissioners Court of Walker County. The judge of the county court at law may, in lieu of appointing an official court reporter, contract for the services of a

court reporter under guidelines to be established by the commissioners court.

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 Walker 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 court in Walker 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 Walker 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. All cases of concurrent jurisdiction enumerated or included in Section 3 of this Act may be instituted in or transferred between the district court in Walker County and the county court at law in Walker 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 hearing 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 the judge of the county court at law, be made available and shall serve for the week in the county court at law.

Sec. 11. The Commissioners Court of Walker 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 Walker County." The County Court at Law of Walker County shall be a court of record.

Sec. 13. Appeals in all civil cases from judgments and orders of the county court at law shall be to the Court of Civil Appeals as is now or may be hereafter provided for appeals from district and county courts and in all criminal cases shall be to the Court of Criminal Appeals.

Sec. 14. All cases appealed from the justice courts and other inferior courts in Walker County shall be made direct to the County Court at Law of Walker County, unless otherwise provided by law.

Sec. 15. The effective date of this Act is September 1, 1977.
[Acts 1977, 65th Leg., p. 139, ch. 68, §§ 1 to 15, eff. Sept. 1, 1977.]

COMAL COUNTY

Art. 1970-368. County Court at Law of Comal County

Sec. 1. There is created a court in Comal County to be known as the County Court at Law of Comal County.

Sec. 2. (a) The county court at law has the same jurisdiction over all causes and proceedings, civil and criminal, original and appellate, as is prescribed by the constitution and general laws of the state for county courts. The county court at law has jurisdiction concurrent with the district court in Comal County in juvenile matters and proceedings and in all civil and criminal matters and proceedings, original and appellate, for which jurisdiction was transferred from the county court to the district court by Chapter 35, Acts of the 18th Legislature, Regular Session, 1883. The county court at law has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the amount in controversy exceeds \$500 and does not exceed \$5,000, exclusive of interest, as provided by general law. The county court at law 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 Comal County.

(b) The county court at law has the general jurisdiction of a probate court within the limits of Comal County, and its jurisdiction is concurrent with that of the County Court of Comal County in probate matters and in proceedings.

(c) The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, superseadeas, and all writs necessary for the enforcement of the jurisdiction of the court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court, or of any other court in the county of inferior jurisdiction. The court and judge also 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, and he is a magistrate and conservator of the peace.

(d) The County Judge of Comal County is the judge of the County Court of Comal County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Comal County except insofar as the same are, by this Act, committed to the judge of the County Court at Law of Comal County.

Sec. 3. The terms of the County Court at Law of Comal County are the same as those for the County Court of Comal County, Texas.

Sec. 4. (a) There shall be elected, by the qualified voters of the county, a judge of the County Court at Law of Comal County, who must have been a duly licensed and practicing member of the State Bar of Texas for not less than five years, who must be well informed in the laws of this state, and who must have resided and been actively engaged in the practice of law in Comal County for a period of not less than one year prior to the general election. The judge elected holds office for four years and until his successor has been duly elected and has qualified. During his term of office, the judge shall not engage in the private practice of law.

(b) When this Act becomes effective, the Commissioners Court of Comal County shall appoint a judge to the County Court at Law of Comal County. The judge appointed must have the qualifications prescribed in Subsection (a) of this section and serves until the next general election and until his successor has been duly elected and has qualified. Beginning at the general election in 1978 and every fourth year thereafter, there shall be elected a judge of the county court at law for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. A vacancy occurring in the office of the judge of the County Court at Law of Comal County may be filled by appointment by the commissioners court, and the appointee holds office until the next general election and until his successor has been duly elected and has qualified.

(c) The judge of the County Court at Law of Comal 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.

(d) The Commissioners Court of Comal County shall fix the salary of the judge of the County Court at Law of Comal County. The judge 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) A special judge of the county court at law may be appointed or elected as provided by law for county courts. A special judge is entitled to the same rate of compensation as the regular judge.

(f) 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. The special judge selected is entitled to the compensation provided in Subsection (e) of this section.

Sec. 5. (a) The county attorney, county clerk, and sheriff of Comal County shall serve as county attorney, county clerk, and sheriff, respectively, of

the County Court at Law of Comal County. The Commissioners Court of Comal County may employ as many assistant county attorneys, deputy sheriffs, and bailiffs 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 Comal County.

(b) The judge of the county court at law may appoint an official court reporter who serves at the pleasure of the judge and who is entitled to the compensation fixed by the commissioners court. The official court reporter must have the qualifications prescribed by law for district court reporters.

(c) The seal of the court shall contain the words "County Court at Law of Comal County," but in other respects is identical with the seal of the County Court of Comal County.

Sec. 6. (a) Practice in the County Court at Law of Comal County shall conform to that prescribed by law for the County Court of Comal 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 matters within their concurrent probate jurisdiction, in order that the business may be equally distributed between them. All cases of concurrent jurisdiction enumerated or included in Subsection (a) of Section 2 of this Act may be instituted in or transferred between the district court in Comal County and the County Court at Law of Comal County. 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.

(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 cause or proceeding. Either judge may hear all or any part of a cause or proceeding pending in the county court or county court at law, and he may rule or enter orders on and continue, determine, or render judgment on all or any part of the cause or proceeding without the necessity of transferring it to his own docket. However, the judge of either court may not sit or act in any cause or proceeding 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 matter is pending.

Sec. 7. (a) The jurisdiction and authority now vested by law in the county clerk and the county judge of Comal County for the drawing, selection,

and service of jurors and talesmen shall also be exercised by the county court at law and its judge.

(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. This Act shall take effect July 15, 1977, [Acts 1977, 65th Leg., p. 284, ch. 137, §§ 1 to 8, eff. July 15, 1977.]

TOM GREEN COUNTY

Art. 1970-369. County Court at Law of Tom Green County

Sec. 1. The County Court at Law of Tom Green County is created.

Sec. 2. (a) The county court at law has jurisdiction in all causes and proceedings, civil, criminal, juvenile, and probate, original and appellate, over which by the constitution and general laws of the state the county courts have jurisdiction, and its jurisdiction is concurrent with that of the county court of Tom Green County. This provision does not affect the jurisdiction of the commissioners court or of the county judge of Tom Green County as the presiding officer of the commissioners court. The county judge of Tom Green County shall be the judge of the county court of Tom Green County. All ex officio duties of the county judge shall be exercised by the judge of the county court of Tom Green County unless by this Act committed to the judge of the county court at law.

(b) The county court at law has jurisdiction concurrent with the district court in eminent domain cases as provided by general law and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$10,000, exclusive of interest.

Sec. 3. 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.

Sec. 4. The terms of the county court at law are the same as those for the county court of Tom Green County.

Sec. 5. (a) The judge of the county court at law shall have been a bona fide resident of Tom Green County for two years prior to his appointment or election. 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. 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.

(b) When this court is created, the commissioners court shall appoint a judge to the county court at law who shall serve until the next general election and until his successor is duly elected and has qualified. At the general election in 1978 or 1982, and every fourth year thereafter, there shall be elected by the qualified voters of Tom Green County a judge of the county court at law for a regular term of four years, as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. A vacancy in the office of the judge of the county court at law shall be filled by appointment by the commissioners court, and the appointee holds office until January 1 of the year following 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 may receive a salary to be set by the commissioners court to be paid in equal monthly installments out of the county treasury by the commissioners court. He may 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 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.

(e) 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, county clerk, and sheriff of Tom Green County shall serve as county attorney, clerk, and sheriff, respectively, of the county court at law. These officials, either personally or by the appointment of a deputy or assistant, shall perform the duties and responsibil-

ities of their offices 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 may appoint an official court reporter, who must meet the qualifications prescribed by law for that office, who is entitled to the compensation fixed by the Commissioners Court of Tom Green County, and who shall serve at the pleasure of the judge of the county court at law. Except where inconsistent with this Act, all general laws relating to court reporters apply to the official court reporter of the county court at law. The reporter shall be available for matters being considered in the county court and in the district courts in Tom Green County, with the approval of the judge of the county court at law.

Sec. 7. (a) Practice in the county court at law shall conform to that prescribed by law for the county court.

(b) In order that the business may be equally distributed between the courts, the judges of the county court at law and the county court may transfer cases to and from the dockets of their respective courts and the judges of the county court at law and the district courts 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.

(c) The county judge and the judge of the county court at law may, in their discretion, exchange benches from time to time, and either of the judges may, in his own courtroom, try and determine any case or proceeding pending in either of the courts without having the case transferred, or may sit in either of the courts 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 other court. In case of absence, sickness, or disqualification of either of the judges, the other judge may hold court for him. Either of the judges may hear any part of any case or proceeding pending in either of the courts and determine the same or may hear and determine any question in any case, and either of the judges may complete the hearing and render judgment in the case. However, the judge of either court may not sit or act in a case unless it is within the jurisdiction of his court.

(d) In cases transferred to any of the courts 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 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 laws that govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law. A general panel of jurors, or jurors impaneled for a week by a district court, may be made available and shall serve for the week in the county court at law.

Sec. 9. (a) The Commissioners Court of Tom Green 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 Tom Green County, except that it shall contain the words "County Court at Law of Tom Green County."

Sec. 10. The County Court at Law of Tom Green County is created on January 1, 1980, or on a date determined by the commissioners court by an order entered in its minutes, whichever date is earlier. [Acts 1977, 65th Leg., p. 688, ch. 260, §§ 1 to 10, eff. Aug. 29, 1977.]

MIDLAND COUNTY

Art. 1970-370. County Court at Law of Midland County

Sec. 1. The County Court at Law of Midland County is created on the date determined by the provisions of Section 10a of this Act.

Sec. 2. (a) The county court at law has jurisdiction in all causes and proceedings, civil, criminal, juvenile, and probate, original and appellate, over which by the constitution and general laws of the state the county courts have jurisdiction, and its jurisdiction is concurrent with that of the County Court of Midland County. This provision does not affect the jurisdiction of the commissioners court or of the county judge of Midland County as the presiding officer of the commissioners court. The county judge of Midland County shall be the judge of the county court of Midland County. All ex officio duties of the county judge shall be exercised by the

judge of the county court of Midland County unless by this Act committed to the judge of the county court at law.

(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, as provided by general law.

Sec. 3. 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.

Sec. 4. The terms of the county court at law are the same as those for the County Court of Midland County.

Sec. 5. (a) The judge of the county court at law must be a duly licensed and practicing member of the State Bar of Texas who has resided in and been actively engaged in the practice of law in Midland 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 shall appoint a judge to the county court at law who shall serve 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 Midland County a judge of the county court at law for a regular term of four years beginning on January 1, 1979, as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. A vacancy in the office of the judge of the county court at law shall be filled by appointment by the commissioners court, and the appointee holds office until January 1 of the year following 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 to be set by the commissioners court and to be paid in equal monthly installments out of the county treasury by the commissioners court. 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 judge of the county court at law 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.

(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 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, county clerk, and sheriff of Midland County shall serve as county attorney, clerk, and sheriff, respectively, of the county court at law. These officials, either personally or by the appointment of a deputy or assistant, shall perform the duties and responsibilities of their offices 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 may appoint an official court reporter, who must meet the qualifications prescribed by law for that office, who is entitled to the compensation fixed by the Commissioners Court of Midland County, and who shall serve at the pleasure of the judge of the county court at law. Except where inconsistent with this Act, all general laws relating to court reporters apply to the official court reporter of the county court at law. The reporter shall be available for matters being considered in the county court and in the district courts in Midland County, with the approval of the judge of the county court at law.

Sec. 7. (a) Practice in the county court at law shall conform to that prescribed by law for the county court.

(b) In order that the business may be equally distributed between the courts, the judges of the county court at law and the county court may transfer cases to and from the dockets of their respective courts and the judges of the county court at law and the district courts 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.

(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 any of the courts 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 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. 8. The laws that govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law. A general panel of jurors, or jurors impaneled for a week by a district court, may be made available and shall serve for the week in the county court at law.

Sec. 9. (a) The Commissioners Court of Midland 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 Midland County, except that it shall contain the words "County Court at Law of Midland County."

Sec. 10. The judge of the county court at law is a member of the Midland County Juvenile Board.

Sec. 10a. The County Court at Law of Midland County is created on January 1, 1980, or on an earlier date determined by the Commissioners Court of Midland County by an order entered in its minutes, finding and determining that the conditions of the dockets of the district courts serving Midland County require the creation of the county court at law to properly dispose of cases arising in Midland County. In determining the need of a county court at law, the commissioners court may submit the

question in a nonbinding referendum to the voters of Midland County at any countywide general election or special election called for that purpose.

[Acts 1977, 65th Leg., p. 1626, ch. 640, §§ 1 to 10a, eff. Jan. 1, 1978.]

Section 12 of the 1977 Act provides that the provisions of this Act take effect on January 1, 1978.

RANDALL COUNTY

Art. 1970-371. County Court at Law of Randall County

Sec. 1. The County Court at Law of Randall County is created on the date determined by the provisions of Section 13 of this Act.

Sec. 2. The County Court at Law of Randall County, concurrently with the County Court of Randall County, has jurisdiction over all causes and proceedings, civil and criminal, juvenile and probate, original and appellate, prescribed by the constitution and general laws of this state 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 Randall County.

Sec. 3. The County Court at Law of Randall 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.

Sec. 4. In addition to the jurisdiction conferred on the County Court at Law of Randall County by the other provisions of this Act, the county court at law has concurrent civil jurisdiction with the district courts of Randall 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, temporary support 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 Randall 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. 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 Randall County which is now performed by the County Judge of Randall County.

Sec. 6. The county court at law shall hold two continuous terms which 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. 7. (a) The judge of the county court at law shall be a qualified voter in Randall 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 his 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 court is created, the Commissioners Court of Randall County shall appoint a judge to the County Court at Law of Randall County. The judge appointed serves until the next general election and until his successor is duly elected and has qualified. Beginning at the general election in 1978 or 1982 and every fourth year thereafter, there shall be elected by the qualified voters of Randall County a judge of the county court at law 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 Randall 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 may receive a salary to be set by the commissioners court and to be paid out of the county treasury by the commissioners court. The salary may be paid in equal monthly installments. The judge of the county court at law may 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 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.

(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 criminal district attorney and sheriff of Randall County shall serve as district attorney and sheriff, respectively, of the County Court at Law of Randall County. The district clerk of Randall County shall serve as clerk of the county court at law in cases enumerated in Sections 3 and 4 of this Act, and the county clerk of Randall 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 Randall County.

Sec. 9. (a) As soon as practicable after this court is created, 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 Randall 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 Randall 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 Randall 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 in Sections 3 and 4 of this Act may be instituted in or transferred between the district courts of Randall County and the County Court at Law of Randall County. However, no case may be transferred from one court to another 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 their 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. The

district judges and the judge of the county court at law may freely exchange benches and courtrooms with each other in matters within their concurrent jurisdiction so that if one is ill, disqualified, or otherwise absent, another may hold court for him without the necessity of transferring the case involved. Either of the judges may hear all or any part of a case pending in the district court or county court at law, but only in matters within their 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, a judge 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. The provisions providing for the exchange of benches by and between the judges are 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 Section 4 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 Section 4 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 Randall 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 Randall County."

Sec. 13. The County Court at Law of Randall County is created on January 1, 1980, or on a date determined by the commissioners court by an order entered on its minutes, which ever date is earlier. [Acts 1977, 65th Leg., p. 1723, ch. 688, §§ 1 to 13, eff. Aug. 29, 1977.]

REEVES COUNTY

Art. 1970-372. County Court at Law of Reeves County

Sec. 1. The County Court at Law of Reeves County is created on the date determined by the provisions of Section 20 of this Act. It shall sit in Pecos, Texas.

Sec. 2. (a) The County Court at Law of Reeves County has jurisdiction in all matters and causes, civil, criminal, juvenile, and probate, original and appellate, over which, by the general laws of the state, the county court of the county would have jurisdiction. This provision does not affect the jurisdiction of the commissioners court, or of the County Judge of Reeves County as the presiding officer of the commissioners court, as to roads, bridges, and public highways, and matters which are now in the jurisdiction of the commissioners court or the judge thereof.

(b) The County Court at Law of Reeves County has jurisdiction concurrent with the district court in eminent domain cases, as provided by general law, and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$10,000, exclusive of interest.

(c) The County Court at Law of Reeves County has concurrent civil jurisdiction with the district court in Reeves County in suits, causes, and matters involving adoptions, removal of disability of minority and coverture, and all divorce and marriage annulment cases, including the adjustment of property rights and custody and support of minor children involved therein, temporary support pending final hearing, and any and every other matter incident to divorce or annulment proceedings as well as independent actions involving child support and custody of minors, and change of name of persons. This court and the judge thereof shall have the power to issue writs of habeas corpus, mandamus, injunction, and all writs necessary to enforce its jurisdiction.

(d) Nothing in this Act shall diminish the jurisdiction of the district courts in Reeves 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 Act is concurrent with the jurisdiction of the district courts.

Sec. 3. The County Court of Reeves County shall have no jurisdiction, civil, criminal, juvenile, or probate, original or appellate. All ex officio duties of the county judge shall be exercised and retained by the judge of the County Court of Reeves County, except insofar as same shall by this Act be committed to the County Court at Law of Reeves County.

Sec. 4. The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the County Court at Law of Reeves County. 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.

Sec. 5. (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 (c) of Section 2 of this Act shall be governed by the provisions of this Act and the laws and rules pertaining to district courts, general and special, as well as county courts. If a case enumerated in Subsection (c) of Section 2 is tried before a jury, the jury shall be composed of 12 members.

(b) The county court at law shall have the same terms of court as the district court sitting in Reeves County as presently established or as they may hereinafter be changed.

(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.

Sec. 6. At the general election in 1978 and every four years thereafter, there shall be elected a judge of the County Court at Law of Reeves County who shall have been a duly licensed and practicing member of the State Bar of Texas for not less than five years, who shall be well informed in the laws of the state, who shall have resided in and been actively engaged in the practice of law in Reeves County for a period of not less than two years prior to the general election, and who shall hold his office for four years and until his successor shall have been duly elected and qualified. When this court is created, the commissioners court shall appoint a judge of the County Court at Law of Reeves County who shall have the qualifications prescribed in this section and who shall serve until December 31, 1978, and until his successor shall be duly elected and qualified. A vacancy thereafter occurring in the office of the judge of the County Court at Law of Reeves County shall in like manner be filled by the commissioners court, with the appointee to hold office until the next succeeding general election and

until his successor shall be duly elected and qualified.

Sec. 7. The judge of the County Court at Law of Reeves County may receive a salary in an amount determined by the commissioners court, not to exceed 90 percent of the total salary paid the district judge, to be paid out by the county treasurer by order of the commissioners court. The salary shall be paid monthly in equal installments. The judge of the county court at law is entitled to traveling expenses and necessary office expenses, including administrative and clerical help. The judge of the County Court at Law of Reeves County shall assess the same fees as are now prescribed by law relating to the county judge's fees, all of which shall be collected by the clerk of the court, shall be paid into the county treasury on collection, and no part of which shall be paid to the judge.

Sec. 8. The judge of the County Court at Law of Reeves County shall execute a bond and take the oath of office as required by law relating to county and district judges.

Sec. 9. The judge of the county court at law shall not engage in the practice of law in this or any other court in the State of Texas.

Sec. 10. The judge of the County Court at Law of Reeves 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. 11. A special judge of the County Court at Law of Reeves County may be appointed or elected as provided by law relating to county courts. In the case of a disqualification of the judge of the county court at law to try a case pending in this court, the parties or their attorneys may agree on the selection of a special judge to try the case. A special judge, whether appointed, elected, or selected by the parties, shall receive, as compensation for each day he actively serves, an amount equal to 1/365th of the annual salary of the judge of the County Court at Law of Reeves County, to be paid out of the general fund of the county by the commissioners court.

Sec. 12. The county attorney of Reeves County shall represent the state in the County Court at Law of Reeves County as provided by law for prosecutions in county court, and shall be entitled to the fees prescribed by law for prosecutors in the county court.

Sec. 13. The sheriff of Reeves County shall in person or by deputy attend the court when required by the judge thereof.

Sec. 14. The county clerk of Reeves County shall be the clerk of the County Court at Law of Reeves County, except that the district clerk of Reeves

County shall be the clerk of the county court at law in all those cases enumerated in Subsection (c), Section 2, of this Act.

Sec. 15. The judge of the County Court at Law of Reeves County shall 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 to be set by the commissioners court of Reeves County and to be paid out of the county treasury of Reeves 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 apply insofar as they are applicable to the official shorthand reporter authorized in this Act to be appointed and insofar as they are not inconsistent with this Act.

Sec. 16. The seal of the court shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law of Reeves County." The commissioners court of Reeves County shall furnish and equip a suitable courtroom and office space for the court created by this Act.

Sec. 17. All cases of concurrent jurisdiction may be instituted in or transferred between the district court of Reeves County and the County Court at Law of Reeves County.

Sec. 18. All cases appealed from the justice courts and other inferior courts in Reeves County shall be appealed to the County Court at Law of Reeves County under the provisions governing such appeals to the county courts. The laws of the State of Texas, the rules of procedure, and the rules of evidence shall be applicable to and control trials and proceedings in the County Court at Law of Reeves County, and shall be applicable to and govern the proceedings in and appeals to and appeals from the County Court at Law of Reeves County.

Sec. 19. When the county court at law is created, all cases and matters pending before the County Court of Reeves County are transferred to the County Court at Law of Reeves 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. 20. The County Court at Law of Reeves County is created on January 1, 1978, or on a date determined by the commissioners court by an order entered in its minutes, whichever date is earlier. [Acts 1977, 65th Leg., p. 1736, ch. 692, §§ 1 to 20, eff. June 15, 1977.]

TITLE 42

COURTS—PRACTICE IN DISTRICT AND COUNTY

CHAPTER ONE. INSTITUTION, PARTIES AND VENUE

4. VENUE

Art. 1995. Venue, General Rule

No person who is inhabitant of this State shall be sued out of the county in which he has domicile except in the following cases:

[See Compact Edition, Volume 3 for text of 1 to 5]

6. Executors, administrators, etc.—If the suit is against an executor, administrator or guardian, as such, to establish a money demand against the estate which he represents, the suit may be brought in the county in which such estate is administered, or if the suit is against an executor, administrator or guardian growing out of a negligent act or omission of the person whose estate the executor, administrator or guardian represents, the suit may be brought in the county where the negligent act or omission of the person whose estate the executor, administrator or guardian represents occurred.

[See Compact Edition, Volume 3 for text of 7 to 9]

9a. Negligence.—A suit based upon negligence per se, negligence at common law or any form of negligence, active or passive, may be brought in the county where the act or omission of negligence occurred or in the county where the defendant has his domicile. The venue facts necessary for plaintiff to establish by the preponderance of the evidence to sustain venue in a county other than the county of defendant's residence are:

1. That an act or omission of negligence occurred in the county where suit was filed.

2. That such act or omission was that of the tort-feasor, in person, or that of his servant, agent or representative acting within the scope of his employment, or that of the person whose estate the defendant represents as executor, administrator, or guardian.

3. That such negligence was a proximate cause of plaintiff's injuries.

[See Compact Edition, Volume 3 for text of 10 to 31]

[Amended by Acts 1977, 65th Leg., p. 856, ch. 322, § 1, eff. Aug. 29, 1977.]

CHAPTER THREE. CITATION

Article

2039b. Citation of Nonresidents for Tax Purposes [NEW].

Art. 2028. Against Cities, Towns, Villages and School Districts

Sec. 1. In suits against an incorporated city, town or village, the citation may be served on the mayor, clerk, secretary or treasurer thereof.

Sec. 2. In suits against a school district the citation may be served on the president of the school board or the superintendent.

[Amended by Acts 1977, 65th Leg., p. 1277, ch. 499, § 1, eff. June 15, 1977.]

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, 73rd, 224th, 225th, 226th, and 227th District Courts may appoint an Assignment Clerk to serve said Courts in Bexar County under the presiding Judge of said District Courts in the coordination, 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 coordination, setting and disposing of cases. The Assignment Clerk 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 Commissioners Court of such County shall provide for the payment of the salary of the Assignment Clerk out of the general fund or the jury fund of said County. 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; Acts 1977, 65th Leg., p. 1762, ch. 710, § 1, eff. Aug. 29, 1977.]

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 "Interchangeable 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 optional 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 EIGHT. TRIAL OF CAUSES

5. CASE TO JURY

Art. 2194a. Bringing Meals into Jury Room

(a) Whenever the judge deems it advisable, in order to expedite the final disposition of any district court civil case for which a jury is empaneled, to keep the jury together for deliberation rather than to dismiss it for meals, he shall have the power to draw a warrant on the jury fund or other appropriate fund of the county in which the case is being tried, to cover the cost of buying meals and bringing same into the jury room. However, not more than Three Dollars (\$3) may be spent per meal for any juror.

[See *Compact Edition, Volume 3 for text of (b)*]
[Amended by Acts 1977, 65th Leg., p. 670, ch. 253, § 1, eff. Aug. 29, 1977.]

**CHAPTER NINE. JUDGMENTS
AND REMITTITUR**

Art. 2226. Attorney's Fees

Any person, corporation, partnership, or other legal entity having a valid claim against a person or corporation for services rendered, labor done, material furnished, overcharges on freight or express, lost or damaged freight or express, or stock killed or injured or suits founded upon a sworn account or accounts, or suits founded on oral or written contracts, may present the same to such persons or corporation or to any duly authorized agent thereof; and if, at the expiration of 30 days thereafter, payment for the just amount owing has not been tendered, the claimant may, if represented by an attorney, also recover, in addition to his claim and costs, a reasonable amount as attorney's fees. The provisions hereof shall not apply to contracts of insurers issued by insurers subject to the provisions of the Unfair Claim Settlement Practices Act (Article 21.21-2, Insurance Code), nor shall it apply to contracts of any insurer subject to the provisions of Article 3.62, Insurance Code, or to Chapter 387, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 3.62-1, Vernon's Texas Insurance Code), or to Article 21.21, Insurance Code, as amended, or to Chapter 9, Insurance Code, as amended, and each such article or chapter shall be and remain in full force and effect.

[Amended by Acts 1977, 65th Leg., p. 153, ch. 76, § 1, eff. Aug. 29, 1977.]

**CHAPTER THIRTEEN. GENERAL
PROVISIONS**

MISCELLANEOUS

Article

- 2292m. Bailiff in the 30th, 78th, and 89th District Courts [NEW].
2292n. Bailiff of County Court of Harrison County [NEW].

MISCELLANEOUS

**Art. 2292m. Bailiff in the 30th, 78th, and 89th
District Courts**

Bailiffs Appointed by Judges

Sec. 1. The judges of the 30th, 78th, and 89th District Courts shall appoint a person to serve their respective courts as bailiff.

Evidence of Appointment

Sec. 2. An order signed by the appointing judge entered in the minutes of the court shall be evidence of appointment of the bailiff.

Qualifications

Sec. 3. To be eligible for appointment to the office of bailiff, a person must be a resident of Wichita County and at least 21 years old.

Term of Office

Sec. 4. The bailiff holds office at the will of the judge.

Duties

Sec. 5. A person appointed bailiff is an officer of the court. Such person shall perform in the 30th, 78th, or 89th District Court, as the case may be, all duties imposed on bailiffs under the general laws of Texas and shall perform other duties required by the judge of the court.

Compensation

Sec. 6. The bailiff shall be paid out of the general fund of Wichita County a salary set by the judge and approved by the commissioners court. [Acts 1977, 65th Leg., p. 744, ch. 278, §§ 1 to 6, eff. Aug. 29, 1977.]

**Art. 2292n. Bailiff of County Court of Harrison
County**

Bailiff Appointed by Judge

Sec. 1. The judge of the County Court of Harrison County shall appoint a person to serve his court as bailiff.

Evidence of Appointment

Sec. 2. An order signed by the judge entered in the minutes of the court shall be evidence of the appointment of the bailiff.

Qualifications

Sec. 3. To be eligible for appointment to the office of bailiff, a person must be a resident of Harrison County and at least 21 years old.

Term of Office

Sec. 4. The bailiff holds office at the will of the judge.

Duties; May be Deputized

Sec. 5. (a) A person appointed bailiff is an officer of the court. He shall perform in the County Court of Harrison County all duties imposed on bailiffs under the general laws of Texas and shall perform other duties required by the judge of the court.

(b) The sheriff of Harrison County, on the request of the judge, shall deputize the person who is bailiff of the county court, in addition to other deputies authorized by law.

Compensation

Sec. 6. The bailiff shall be paid a salary in an amount to be set by the judge, not to exceed the salary of a deputy sheriff of the county, and to be paid out of the general fund of Harrison County. [Acts 1977, 65th Leg., p. 1527, ch. 620, §§ 1 to 6, eff. Aug. 29, 1977.]

3. OFFICIAL COURT REPORTER

Article

2324b. Regulation and Certification of Court Reporters [NEW].
 2326a-1. Travel Expenses and Per Diem Payments to Visiting Court Reporters [NEW].

6. CIVIL JUDICIAL COUNCIL

Article

2328b. Office of Court Administration of the Texas Judicial System [NEW].

Art. 2321. Appointment and Examination

Each judge of a court of record shall appoint an official court reporter who shall be a sworn officer of the court and shall hold office at the pleasure of the court.

[Amended by Acts 1977, 65th Leg., p. 1158, ch. 438, § 17, eff. Aug. 29, 1977.]

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 (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 bind-

ing 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. 2324b. Regulation and Certification of Court Reporters

Certificate Required

Sec. 1. No person may be appointed an official court reporter or deputy court reporter or may engage in the practice of shorthand reporting for use in litigation in the courts of this state unless that person is the holder of a certificate in full force and effect issued by the Supreme Court of Texas.

Penalties

Sec. 2. A person engaging in the practice of shorthand reporting who violates the provisions of Section 1 of this Act is guilty of a Class A misdemeanor, and each day of violation shall constitute a separate offense.

Definition

Sec. 3. In this Act, "the practice of shorthand reporting for use in litigation in the courts of this state" means the making of a verbatim record of an oral court proceeding, deposition, or proceeding before a grand jury, referee, or court commissioner by means of written symbols or abbreviations in shorthand or machine shorthand writing or oral stenography.

Texas Court Reporters Committee; Creation; Membership

Sec. 4. There is hereby created the Texas Court Reporters Committee to consist of the following nine members appointed by the supreme court:

- (1) one active district judge who shall serve as the committee's chairman;
- (2) two active members of the State Bar who have been practicing members of the bar during more than five consecutive years next preceding their appointment; and
- (3) three active official court reporters and three active free-lance court reporters who have been engaged in the practice of shorthand reporting for use in litigation in the courts of this state during more than five consecutive years next preceding their appointment.

Terms of Office

Sec. 5. The regular term of office of committee members shall be six years, but initially the terms of two court reporters and one attorney shall expire on December 31, 1978, and the terms of two court reporters and one attorney shall expire on December 31, 1980, and the terms of two court reporters and the district judge shall expire on December 31, 1982.

Successors; Vacancies

Sec. 6. Committee members shall hold office until the appointment and qualification of their successors. An interim vacancy shall be filled for the unexpired portion of the term in the same manner as the appointment at the expiration of a full term. Committee members may succeed themselves in office only if they have served less than three consecutive years.

Compensation; Expenses

Sec. 7. Committee members shall receive no compensation for their services but are entitled to receive actual and necessary expenses for traveling and other necessary expenses incurred in the discharge of their duties as members of the committee.

Meetings, Hearings, Examinations; Quorum; Records

Sec. 8. The committee may hold its meetings, hearings, examinations, and other proceedings at such times and places as it shall determine but shall meet in Austin, Texas, at least once each year. Five members constitute a quorum for the transaction of business. The committee shall keep a complete record of all of its proceedings and all certificates issued, renewed, or revoked, together with a detailed statement of receipts and disbursements.

Executive Functions; Subcommittees; Employees

Sec. 9. The committee is charged with the executive functions necessary to effectuate the purposes of this Act under such rules as may be promulgated by the supreme court. The committee may appoint subcommittees as it deems necessary or proper. The committee may employ the employees it deems necessary for the performance of the duties and exercise of the powers conferred on the committee and may pay from funds available to it all expenses reasonably necessary to effectuate the purposes of this Act.

Application for Examination; Fee

Sec. 10. Each applicant for a certificate under this Act shall file an application with the committee at least 30 days before the date fixed for examination, accompanied by the required fee. The fee for an examination given by the committee shall be fixed by the committee, subject to the approval of the supreme court.

Initial Certificate Fee; Renewals

Sec. 11. (a) Each person to whom a certificate is issued shall, as a condition precedent to its issuance and in addition to any other fee which may be payable, pay the initial certificate fee which shall be fixed by the committee, subject to approval by the supreme court.

(b) Each certificate issued under this Act that has not been renewed shall expire at the date of the second anniversary of the date of the issuance of the certificate. To renew a certificate, the certificate holder shall, on or before the expiration date of the certificate, pay the renewal fee which shall be fixed by the committee, subject to approval by the supreme court.

Powers and Duties of Committee

Sec. 12. (a) The committee shall have the powers and duties enumerated in Subsections (b) through (e) of this section.

(b) The committee shall administer tests to determine the qualifications of persons applying for certificates under this Act. Each test shall be given in two parts to be designated Part A and Part B. Part A shall be composed of five minutes of two-voice dictation of questions and answers given at 225 words per minute, five minutes of dictation of jury charge given at 200 words per minute, and five minutes of dictation of selected literary material given at 180 words per minute. Each applicant shall personally take down the test, either in his own writing or his own voice, and shall reduce to writing the takedown on either a manual or electric typewriter. The minimum passing grade on each section of Part A of the test shall be 95 percent accuracy. An error shall be charged for each wrong word, for each omitted word, for each added word not dictated, for each contraction where read as two words, for two words where read as a contraction, for each misplaced word, for each misplaced period that would materially alter the sense of a group of words or a sentence, for each misspelled word, for each plural or singular where the opposite was dictated, and for each wrong number. The use of a dictionary will be permitted during Part A of the test. Applicants will be allowed three hours to complete the transcription of Part A of the test. If time permits, the applicant may review his transcript but shall use only his original takedown from which his transcript was prepared to review the transcript. Part B of the test shall consist of objective questions touching on elementary aspects of court reporting, spelling, and grammar. The use of a dictionary will not be permitted during Part B of the test. The minimum passing grade on Part B will be 75 percent. Anyone discovered cheating on the tests is disqualified and will not be eligible for retesting for a period of two years.

(c) The committee shall charge and collect from all applicants for certificates and renewal of certificates the fees provided in this Act.

(d) The committee shall determine the qualifications and pass on the eligibility of all persons applying for certificates under this Act.

(e) The committee shall certify to the supreme court the applicants that are determined on examination by the committee to be qualified in professional shorthand reporting.

(f) Rules not inconsistent with this section may be promulgated by the supreme court.

Revocation of Certificate; Grievance Procedures

Sec. 13. (a) On a verified complaint, the committee may revoke any certificate issued under this Act for unprofessional conduct or other sufficient cause after notice and opportunity of a hearing. The notice shall state the cause for the contemplated revocation and the time and place of the hearing and shall be mailed to the registered address of the holder of the certificate at least 30 days before the hearing. Each committee member is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, and take evidence and require the production of any records concerning any matter within the jurisdiction of the committee, at the direction of a majority of the committee. The committee shall reduce to writing a summary of the evidence given before it and shall make a written finding of the facts thereon. A certificate may be revoked for fraud, dishonesty, corruption, willful violation of duty, having become incompetent to continue to perform the duties as a court reporter, or fraud or misrepresentation in obtaining a certificate under this Act. A disciplinary action of the committee may be appealed by the aggrieved person on trial de novo, with or without a jury, to the district court in the county of the aggrieved person's residence. If the aggrieved party is the official court reporter or deputy court reporter of the court in which the proceeding would be heard, the presiding judge of the administrative judicial district shall appoint the judge of another court or a retired judge to hear and determine the complaint. The committee shall not have the power to suspend a certificate issued under this Act.

(b) A person desiring to file a complaint against a court reporter holding a certificate under this Act shall obtain from the committee a complaint form, which shall be completed and signed under oath, attaching thereto any pertinent documentary evidence. On receipt of the form properly executed, it is the duty of the committee to duplicate and furnish copies of the complaint and attachments to the committee.

(c) Within 30 days from the date the verified complaint is received by the committee, it shall set a

date for the hearing, if a hearing is deemed advisable by the committee, and shall immediately notify the certificate holder of the date of the hearing.

(d) The committee shall govern the treatment of the request for continuances with regard to hearings before the committee.

(e) Rules not inconsistent with this section may be promulgated by the supreme court. At the hearing, the committee will adhere to the general rules of evidence applicable before the district courts of the state.

(f) Five members of the committee shall constitute a quorum. The chairman or his designee shall preside at the hearings.

(g) A copy of the findings and rulings of the committee shall be forwarded to the complainant and the aggrieved person.

Employment of Noncertified Reporters

Sec. 14. Nothing in this Act shall be construed to prohibit the employment of a shorthand reporter not holding a certificate until a certified shorthand reporter is available. Oral depositions, however, may be reported by a person not certified under this Act only if the noncertified reporter delivers to the parties or their counsel present at the deposition an affidavit that no certified shorthand reporter is then available or, on stipulation on the record at the commencement of the deposition, by the parties or their counsel present at the deposition. The provisions of this section do not apply to depositions taken outside this state for use in this state.

Persons Excluded from Act

Sec. 15. The provisions of this Act shall not apply to a party to the litigation involved, his attorney, or to a full-time employee of either.

Certification of Present Reporters

Sec. 16. (a) No examination shall be required of an applicant who is an official court reporter of any court of record in this state as of the effective date of this Act, and said applicant shall be issued a certificate by the supreme court.

(b) Upon application to the committee, no examination shall be required of any court reporter who can verify that prior to the effective date of this Act said applicant had been actively engaged in the practice of shorthand reporting for use in litigation in the courts of this state. Upon approval by the committee, the supreme court shall issue its certificate.

(c) On certification, a court reporter is entitled to use the title "Certified Shorthand Reporter" or the abbreviation "CSR." A certified shorthand reporter may administer oaths to witnesses anywhere in this state.

[Acts 1977, 65th Leg., p. 1155, ch. 438, §§ 1 to 16, eff. Aug. 29, 1977.]

Art. 2326a. Expenses and Manner of Payment

All official shorthand reporters and deputy official shorthand reporters of the District Courts of the State of Texas composed of more than one county, when engaged in the discharge of their official duties in any county in this state other than the county of their residence shall, in addition to the compensation now provided by law for their services, be allowed their actual and necessary expenses while actually engaged in the discharge of such duties, not to exceed the sum of Fifteen Dollars (\$15.00) per day for hotel bills, and not to exceed Six Cents (6¢) a mile when traveling by railroad or bus lines, and not to exceed Sixteen Cents (16¢) a mile when traveling by private conveyance in going to and returning from the place where such duties are discharged, traveling the nearest practical route. Such expenses shall be paid after the completion of each term of court by the respective counties of the Judicial District for which they are incurred, each county paying the expenses incidental to its own regular or special term of court, and said expenses shall be paid to the official or deputy 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.

Provided there shall not be paid to any such official shorthand reporter, or his deputy, more than Two Thousand Dollars (\$2,000.00) in any one year under the provisions of this Act; provided further, that in districts containing two counties only, the expenses herein allowed shall never exceed Four Hundred Dollars (\$400.00) per annum; in districts containing three counties only, the expenses herein allowed shall never exceed Eight Hundred Dollars (\$800.00) per annum; in districts containing four counties only, the expenses herein allowed shall never exceed One Thousand, Four Hundred Dollars (\$1,400.00) per annum; in districts containing five or more counties the expenses herein allowed shall never exceed Two Thousand Dollars (\$2,000.00) per annum.

The account for such services herein provided for shall be sworn to in duplicate by the reporter, and approved by the District Judge, and one copy of said account shall be filed by the reporter with the clerk of the District Court of the county where the Judge of the district resides.

Whenever a special term of any District Court in this state is convened and the services of an additional official or deputy official shorthand reporter is required, then this Act shall also apply to said shorthand reporter so employed by the Judge of said special term, and all expenses as herein provided shall be allowed and paid said shorthand reporter so employed for said special term by the county wherein said special term is convened and held, and shall be in addition to the expenses herein provided for

the official or deputy official shorthand reporter of the district.

Provided, however, that whenever any official or deputy official shorthand reporter is called upon to report the proceedings of any special term of court, or on account of the sickness of any official shorthand reporter of any Judicial District, necessitating the employment of a shorthand reporter from some other county within the state, then the shorthand reporter so employed shall receive and be paid all actual and necessary expenses in going to and returning from the place where he or she may be called on to report the proceedings of any regular or special terms of court.

[Amended by Acts 1977, 65th Leg., p. 310, ch. 144, § 1, eff. May 13, 1977.]

Art. 2326a-1. Travel Expenses and Per Diem Payments to Visiting Court Reporters

Sec. 1. A visiting official shorthand reporter or deputy official shorthand reporter from another judicial district who is required to leave the county of his residence to report the proceedings as a substitute for the official reporter of the county visited is entitled to receive his actual and necessary expenses in going to and returning from the place where he is called on to report the proceedings and, in addition to his regular salary from the county or counties in which the reporter is regularly employed, is entitled to receive a per diem payment of \$30 for each day, or part of a day, which the reporter spends outside the county of his residence in the performance of the duties as a substitute court reporter.

Sec. 2. The traveling expense and per diem payment provided in this Act shall be paid to the substitute court reporter or deputy court reporter by the commissioners court of the county visited, out of the general fund of the county, on the sworn statement of the reporter, approved by the district judge presiding in the court where the proceedings were reported.

[Acts 1977, 65th Leg., p. 1756, ch. 704, §§ 1, 2, eff. June 15, 1977.]

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.

Application of Sunset Act

Sec. 1a. The Texas Civil Judicial Council is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the council is abolished, and this Act expires effective September 1, 1987.

¹ Article 5429k.

[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; Acts 1977, 65th Leg., p. 1851, ch. 735, § 2.140, eff. Aug. 29, 1977.]

6. CIVIL JUDICIAL COUNCIL

Art. 2328b. Office of Court Administration of the Texas Judicial System

Definitions

Sec. 1. In this Act, unless the context requires a different definition:

- (1) "Court" means any tribunal forming a part of the judicial branch of government.
- (2) "Trial court" means any tribunal forming a part of the judicial branch of government with the exception of the supreme court, the court of criminal appeals, and the courts of civil appeals.
- (3) "Office of Court Administration" means the Office of Court Administration of the Texas Judicial System.

Promulgation of Rules

Sec. 2. The supreme court shall promulgate rules of administration for the efficient administration of justice in this state and other rules necessary for the enforcement of this Act. When promulgating rules of administration for the efficient administration of criminal justice in this state, the supreme court will seek the advice of the court of criminal appeals.

Creation of Office; Direction and Supervision; Duties

Sec. 3. (a) The Office of Court Administration of the Texas Judicial System is hereby created.

(b) The office of court administration shall operate under the direction and supervision of the supreme court. It shall perform the duties provided in this Act and such other duties as may be directed by the supreme court and shall provide the necessary staff functions for the efficient operation of the Texas Judicial Council.

Administrative Director

Sec. 4. (a) The supreme court shall appoint the administrative director of the courts, who shall serve at the will of the court and shall be subordinate to, and act by authority of and under the direction of, the chief justice of the supreme court. The administrative director shall direct the operations of the office of court administration and, as an additional duty of his office, shall serve as executive director of the Texas Judicial Council. He shall serve in such other capacities as may be directed by the supreme court or the chief justice.

(b) The administrative director shall devote full time to his official duties.

Employment of Personnel

Sec. 5. The administrative director, with the approval of the chief justice, shall employ such personnel as are necessary for the efficient operation of the office of court administration and of the Texas Judicial Council.

Duties of Administrative Director

Sec. 6. Under the direction and supervision of the chief justice, the administrative director shall implement the provisions of this Act and the rules of administration and other rules promulgated by the supreme court for the efficient administration of justice in this state. He shall:

(1) assist the justices and judges of the various courts in discharging their administrative duties;

(2) consult with and assist the administrative judges in discharging their duties under provisions of law and rules promulgated by the supreme court;

(3) make such recommendations to the supreme court as may be appropriate for the implementation of this Act;

(4) examine the administrative and business methods and systems employed in the offices of the clerks of court and other offices related to and serving the courts and make recommendations for necessary improvement and recommend forms and other documents used to record the business of the courts;

(5) examine the state of the dockets and practices and procedures of the courts and make

recommendations for the promotion of the orderly and efficient administration of justice;

(6) prepare and submit budget estimates of state appropriations necessary for the maintenance and operation of the judicial system, and study and make recommendations on the expenditure of state funds appropriated for the maintenance and operation of the judicial system;

(7) consult with and assist the clerks of court and other officers and employees of the courts and of offices related to and serving the courts to provide for the efficient administration of justice;

(8) consult with and make recommendations to the court administrators and court coordinators of the courts of the state to provide for uniform administration and promote the efficient administration of justice in all courts of the state;

(9) perform such additional duties as may be assigned by the supreme court and by the chief justice; and

(10) prepare an annual report of the activities of his office to be published in the annual report of the Texas Judicial Council.

Clerical Personnel

Sec. 7. The authority of the courts to appoint clerical personnel is not limited by any provision of this Act.

Judge Acting Without Potential Jurisdiction

Sec. 8. Neither this Act nor any rule adopted under this Act may be construed to authorize a judge to act in a case of which his own court would not have potential jurisdiction under the constitution and laws of this state.

Judicial Discretion

Sec. 9. Neither this Act nor any rules adopted under its authority shall be construed to authorize any infringement upon the judicial discretion of any judge of the state in the trying of a case properly before his court.

[Acts 1977, 65th Leg., p. 98, ch. 45, §§ 1 to 9, eff. April 5, 1977.]

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].

2338-1d. Master in Domestic Relations Court in Counties Over 1,500,000 [NEW].

2338-3 to 2338-23. Repealed.

2338-9b.2. Masters in Dallas County Domestic Relations Courts [NEW].

Art. 2338-1c. Appointment of Retired Special Juvenile Court, Domestic Relations Court, or District 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 or a retired district judge, as defined by Chapter 99, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 6228b, Vernon's Texas Civil Statutes), 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 or a retired district judge, as defined by Chapter 99, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 6228b, Vernon's Texas Civil Statutes), 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.

(c) A presiding judge may, with the consent of a retired district judge as defined by Chapter 99, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 6228b, Vernon's Texas Civil Stat-

utes), or a retired judge of a special juvenile court or a domestic relations court, within his district make an assignment outside of his judicial district with the specific authorization of the presiding judge of the district in which that assignment is made.

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; Acts 1977, 65th Leg., p. 1989, ch. 794, § 2, eff. Aug. 29, 1977.]

Art. 2338-1d. Master in Domestic Relations Court in Counties Over 1,500,000

Authorization to Appoint Master; Termination; Qualifications; Compensation

Sec. 1. (a) Each judge of a court of domestic relations in a county of more than 1,500,000 population or any successor court thereto may appoint a

master as provided in this Act. The services of the master may be terminated if the performance of his duties is unsatisfactory to the judge of the court, by which the master was appointed.

(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 judge of the court making such appointment. If the judge of the court determines that the parties litigant are unable to defray the costs of the master's compensation, such costs shall be paid out of the jury fund of the county.

Matters Referred to a Master

Sec. 2. If the judge of a court of domestic relations in such 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 a county of more than 1,500,000 population 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.

Report to Referring Judge; Notice to Parties

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.

Disposition by Referring Judge

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 by Judge upon Request

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.

Failure to Request Hearing

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 Hearing by Master

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.

Appointment of Master not Mandatory

Sec. 10. Nothing in this Act shall be interpreted to require any judge of a court of domestic relations to appoint a permanent or standing master to serve in such court.

[Acts 1977, 65th Leg., p. 1222, ch. 471, §§ 1 to 10, eff. June 15, 1977.]

Art. 2338-3. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(1), eff. Sept. 1, 1977

Prior to repeal, §§ 5 and 6(a) were amended by Acts 1977, 65th Leg., p. 1787, ch. 715, §§ 1, 2.

See, now, the Family District Court Act, art. 1926a.

Art. 2338-3a. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(2), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-4. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(c), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-5. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(3), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-6. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(c), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-7. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(4), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-7a. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(5), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-8. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(6), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-9. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(7), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-9a. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(8), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-9b. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(22), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-9b.1. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(31), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-9c. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(26), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-10. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(9), eff. Sept. 1, 1977

Prior to repeal, § 2 of this article was amended by Acts 1975, 64th Leg., p. 1941, ch. 636, § 4; Acts 1977, 65th Leg., p. 1612, ch. 629, § 4.

See, now, the Family District Court Act, art. 1926a.

Art. 2338-11. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(10), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-11a. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(11), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-11b. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(24), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-13. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(12), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-14. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(13), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-15. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(15), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-15a. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(16), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-15b. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(23), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-15c. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(25), eff. Sept. 1, 1977

Prior to repeal of this article, § 11 was reenacted and amended by Acts 1977, 65th Leg., p. 1292, ch. 510, § 1.

See, now, the Family District Court Act, art. 1926a.

Art. 2338-16. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(17), eff. Sept. 1, 1977

Prior to repeal, § 2 of this article was amended by Acts 1975, 64th Leg., p. 1332, ch. 496, § 3 and § 10 was amended by Acts 1975, 64th Leg., p. 1188, ch. 446, § 1.

See, now, the Family District Court Act, art. 1926a.

Art. 2338-17. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(18), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-18. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(19), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-18a. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(27), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-19. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(20), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-20. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(21), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-21. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(28), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-22. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(29), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338-23. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(30), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

TITLE 44

COURTS—COMMISSIONERS

2. POWERS AND DUTIES

Article

- 2351f-2. Counties of 6500 or Less; Ownership, Operation, and Maintenance of Cemeteries [NEW].
- 2352g. Water Supply or Sewage System in Matagorda County [NEW].
- 2368a-13. Validation of Time Warrants in Counties of Less than 1,000,000 [NEW].
- 2370b-2. Auxiliary Courts in Counties of 1,200,000 or More [NEW].
- 2370c-2. Criminal Justice Facilities in Certain Counties and Cities [NEW].
- 2372h-7. Liability Insurance for County Officers and Employees [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].
- 2372v. Regulation of Massagers and Massage Establishments [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. 2351a-6. Rural Fire Preventing Districts

[See Compact Edition, Volume 3 for text of 1 to 18]

Dissolution of District; Petition; Notice of Hearing

Sec. 19. (a) When it is proposed to dissolve a Rural Fire Prevention District created under this Act, a petition shall be presented to the Board of

Fire Commissioners for the district signed by not less than one hundred (100) of the qualified voters who own taxable real property within the district. If there are less than one hundred (100) such voters, a majority of those qualified voters who own taxable real property in the district must sign the petition.

(b) If the petition is in proper form the Board of Fire Commissioners shall set the day, place, and hour when it will hear and consider the petition.

(c) The Board of Fire Commissioners shall issue notices of the hearing which shall include:

- (1) the name of the district;
- (2) a description of the district's boundaries;
- (3) the proposal that the district be dissolved; and
- (4) the place, date, and time of the hearing on the petition.

(d) The notice shall be published in a newspaper of general circulation in the district once a week for two (2) consecutive weeks. The first published notice must appear at least twenty (20) days before the date of the hearing.

Hearing of Petition; Appeal

Sec. 20. (a) The Board of Fire Commissioners shall hear the petition and all issues concerning the dissolution of the district. Any person interested may appear before the board and oppose or support the proposed dissolution. The board shall grant or deny the petition.

(b) Any person or owner of real or personal property situated within the district may appeal the decision of the Board of Fire Commissioners to a district court in one (1) of the counties in which the district is located.

Election to Confirm Dissolution

Sec. 21. (a) On granting the petition, the board shall call an election to confirm the dissolution of the district.

(b) The election shall be held not less than thirty (30) days nor more than sixty (60) days after the date of the board's decision on the petition.

(c) Notice of the election shall be given in the same manner as required by Section 19 of this Act. The notice shall include:

- (1) the proposition to be submitted to the voters;
- (2) the classification of voters who are authorized to vote; and
- (3) the time and place for holding the election.

(d) The ballot shall be printed to provide for voting for or against the following: "Dissolving the Rural Fire Prevention District."

(e) The presiding judge of each voting place shall supervise the counting of all votes cast and shall certify the results to the Board of Fire Commissioners within ten (10) days after the date of the election. A copy of the results shall be filed with the County Clerk in any county in which the district is located and shall become a public record.

(f) If the majority of the voters voting in the election vote to dissolve the district, the Board of Fire Commissioners shall declare the result and proceed with dissolution.

(g) If the proposition to dissolve the district fails to carry at the election, the Board of Fire Commissioners may not order another election for the same purpose within one (1) year after the result is announced.

(h) After the dissolution of a Rural Fire Prevention District, no election may be held to create a new Rural Fire Prevention District within the boundaries of the old district for a period of one (1) year.

Administration of Property, Debts and Assets

Sec. 22. (a) The Board of Fire Commissioners shall continue to control and administer the property, debts, and assets of the district until all funds have been disposed of and all debts of the district have been paid or settled.

(b) The Board of Fire Commissioners may not dispose of the district's assets except for due compensation unless debts are transferred to another governmental entity or agency embracing the district or within the district, and the transfer will benefit the citizens of the district.

(c) After issuing the dissolution order the Board of Fire Commissioners shall:

- (1) determine the debt, if any, owed by the district;
- (2) correct the last approved assessment rolls of the district by adding any property accidentally left off before the dissolution petition was decided upon; and
- (3) levy and collect a tax on the property included in the correct tax roll in proportion of the debt to the value of the property.

(d) Each taxpayer may pay the tax at once, and the Board of Fire Commissioners shall have suit instituted, if necessary, to enforce payment of taxes and to foreclose liens to secure the payment of taxes due the district.

(e) When all outstanding debts and obligations of the district are paid, the Board of Fire Commissioners shall order the secretary of the district to return all unused tax money to the taxpayers of the district on a pro rata basis. A taxpayer may request that his share of surplus tax money be credited to his county taxes. The board shall direct the secretary to transmit any funds so requested to the County Tax Assessor-Collector.

(f) After all debts have been paid and all assets and funds have been disposed of as provided in this Act, the Board of Fire Commissioners shall file a written report with the Commissioners Court of each county in which all or part of the district is located setting forth a summary of the actions taken by the Board of Fire Commissioners in the dissolution of the district. Within ten (10) days after receiving the report and after determining that the requirements of this Act have been fulfilled, each of the Commissioners Courts shall enter an order finding the Rural Fire Prevention District dissolved, and on entry of the order, the fire commissioners shall be discharged from liability under their bonds, and the district shall be officially dissolved.

[Amended by Acts 1977, 65th Leg., p. 1417, ch. 575, § 1, eff. Aug. 29, 1977.]

Art. 2351e. Repealed by Acts 1977, 65th Leg., p. 1658, ch. 654, § 6, eff. June 15, 1977

See, now, arts. 2351f-1, 2351f-2.

Art. 2351f. Repealed by Acts 1977, 65th Leg., p. 1658, ch. 654, § 5, eff. June 15, 1977

See, now, arts. 2351f-1, 2351f-2.

Art. 2351f-1. Perpetual Trust Fund to Maintain Cemeteries

[See Compact Edition, Volume 3 for text of 1 to 7]

Sec. 8. Except as provided for counties with a population of 6,500 or less, the trustee, the commissioners court, and other elected public officials of the county are hereby prohibited from paying or using any public funds, or using county employees or county equipment and property for the purpose of maintenance and upkeep of neglected and upkept public and private cemeteries.

[Amended by Acts 1977, 65th Leg., p. 1658, ch. 654, § 4, eff. June 15, 1977.]

Art. 2351f-2. Counties of 6,500 or Less; Ownership, Operation, and Maintenance of Cemeteries

Sec. 1. A county with a population of 6,500 or less according to the last preceding federal census may own, operate, and maintain cemeteries and may sell the right of burial within the cemetery. The sale of the right of burial is exempt from the requirements of Article 1577, Revised Civil Statutes of Texas, 1925, as amended. Revenue received from the sale of the right of burial may be used for the purchase of additional land to be used for cemetery purposes and for general upkeep of county cemetery property.

Sec. 2. The commissioners court of a county subject to this Act may spend money in the general fund for the purpose of maintenance and upkeep of public cemeteries in the county, and may dedicate up to one-eighth of the maximum allowable tax levy to that purpose.

Sec. 3. The commissioners court of a county subject to this Act shall serve as the Cemetery Board of the county and be responsible for the management of the cemetery property.

[Acts 1977, 65th Leg., p. 1657, ch 654, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 2352g. Water Supply or Sewage System in Matagorda County

Sec. 1. Matagorda County, acting through its commissioners court, may acquire or construct and may operate a water supply or sewage system serving parts of the county outside the limits of an incorporated city or town.

Sec. 2. Matagorda County may enter management or lease agreements with another public or private entity for operation of a county water or sewage system acquired or constructed under this Act.

Sec. 3. Matagorda County may apply for and receive grants or other assistance from any state or federal governmental entity for the purposes of this Act.

[Acts 1977, 65th Leg., p. 1625, ch. 639, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 2368a-13. Validation of Time Warrants in Counties of Less than 1,000,000

Sec. 1. The governmental acts and proceedings performed by the commissioners court of any county with a population of less than 1,000,000, according to the most recent federal census, in authorizing the issuance of time warrants are validated in all respects as of the date of the act or proceeding if the time warrants were issued after August 1, 1976. Time warrants issued in connection with the pro-

ceedings are validated according to their terms and as of the date they were issued. The acts, proceedings, or time warrants issued in connection with them may not be held invalid because they were not performed in accordance with law.

Sec. 2. This Act does not apply to any matter involved in litigation on the date this Act takes effect if the litigation ultimately results against the legality of the matter. This Act does not apply to any matter that has been nullified by a final judgment of a court of competent jurisdiction.

[Acts 1977, 65th Leg., p. 2010, ch. 803, §§ 1, 2, eff. Aug. 29, 1977.]

Art. 2370b. County Office, Courts and Jail Buildings; Construction, Improvement, etc.

Power to Acquire, Construct, Reconstruct, Remodel, Etc., Buildings

Sec. 1. Whenever the Commissioners Court of any county determines that the county courthouse is not adequate in size or facilities to properly house all county and district offices and all county and district courts and all justice of the peace courts for the precincts in which the courthouse is situated, and to adequately store all county records and equipment (including voting machines) and/or that the county jail is not adequate in size or facilities to properly confine prisoners and other persons who may be legally confined or detained in a county jail, the Commissioners Court may purchase, construct, reconstruct, remodel, improve and equip, or otherwise acquire an office building or buildings, or courts building or buildings, or jail building or buildings (in addition to the existing courthouse and/or jail), or an additional building or buildings in which any one or more of the county or district offices or county, district or justice of the peace courts, or the county jail or any other county facilities or functions may be housed, conducted and maintained; and may purchase and improve the necessary site or sites therefor, and may use such building or buildings for any or all of such purposes, provided that any such building or buildings so acquired shall be located in the county seat, but provided that any regional jail facility built according to the provisions of Section 4(h), The Interlocal Cooperation Act, as amended (Article 4413(32c), Vernon's Texas Civil Statutes), may be located outside the county seat, and further provided that no justice of the peace court shall be housed, conducted or maintained in any such building if said building is located out of the boundaries of the precinct of such justice of the peace court.

[See Compact Edition, Volume 3 for text of 2 to 6]

[Amended by Acts 1977, 65th Leg., p. 1619, ch. 634, § 1, eff. Aug. 29, 1977.]

Art. 2370b-2. Auxiliary Courts in Counties of 1,200,000 or More

The commissioners court in any county with a population of 1,200,000 or more according to the last preceding federal census may authorize specific geographic locations within the county other than the county courthouse as auxiliary courts for purposes of conducting nonjury proceedings and may designate those locations as auxiliary county seats for such purposes.

[Acts 1977, 65th Leg., p. 1203, ch. 465, § 1, eff. Aug. 29, 1977.]

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 17,500 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 severally 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; Acts 1977, 65th Leg., p. 756, ch. 285, § 1, eff. Aug. 29, 1977.]

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. 2372h-6. Civil Service System in Counties of 200,000 or More

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

Establishment of Civil Service

Sec. 2. Any county having a population of 200,000 or more inhabitants according to the last preceding federal census may establish a county civil service system under the provisions of this Act to cover all employees of the county.

[See Compact Edition, Volume 3 for text of 3 to 7]

Powers of Commission

Sec. 8.

[See compact Edition, Volume 3 for text of 8(a) and (b)]

(c) The commission may not make a rule or enforce any existing rule requiring retirement at any age below 70. If a commission rule sets a mandatory retirement age, an employee who reaches that age may have his employment extended on application to and approval by the commissioners court on a year to year basis.

[See Compact Edition, Volume 3 for text of 9 to 13]

[Amended by Acts 1977, 65th Leg., p. 654, ch. 244, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 864, ch. 326, § 1, eff. Aug. 29, 1977.]

Art. 2372h-7. Liability Insurance for County Officers and Employees

Sec. 1. A county may insure its officers and employees against liability to a third person arising from the performance of official duties or duties of employment by purchasing policies of liability insurance from an insurer authorized to do business in this state.

Sec. 2. Insurance purchased by a county under the provisions of this Act shall be on forms approved by the State Board of Insurance.

[Acts 1977, 65th Leg., p. 1657, ch. 653, §§ 1, 2, eff. Aug. 29, 1977.]

Art. 2372p-2. Personal Bond Offices

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

Sec. 4. (a) If a court releases an accused on personal bond on a personal bond office's recommendation, the court shall assess a personal bond fee of \$20 or of three percent of the amount of the bail fixed for the accused, whichever is greater. The court may waive the fee or assess a lesser fee if good cause is shown.

[See Compact Edition, Volume 3 for text of 4(b) and (c)]

[Amended by Acts 1977, 65th Leg., p. 1914, ch. 765, § 1, eff. Aug. 29, 1977.]

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 company 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. Parking Stations Near Courthouses in Counties Over 800,000

Power to Construct and Operate Parking Stations; Leases

Sec. 1. The commissioners court of any county with a population in excess of 800,000 according to the most recent federal census upon finding that it is to the best interest of the county and its inhabitants shall have the power to construct, enlarge, furnish, equip and operate a parking station in the vicinity of the courthouse of the county. It is further authorized from time to time to lease said parking station to a person or corporation on such terms as the commissioners court shall deem appropriate.

[See Compact Edition, Volume 3 for text of 2 to 9]

[Amended by Acts 1977, 65th Leg., p. 379, ch. 188, § 1, eff. Aug. 29, 1977.]

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 vehicles 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.

Art. 2372v. Regulation of Massagers and Massage Establishments

Definitions

Sec. 1. In this Act:

(1) "Massage" means the rubbing, kneading, tapping, compression, vibration, application of friction,

or percussion of the human body or parts of it by hand or with an instrument or apparatus.

(2) "Massager" means an individual who administers massages for compensation.

(3) "Massage establishment" means a business establishment where massagers practice massage.

(4) "Unincorporated territory" means the territory outside the corporate limits of an incorporated city or town.

Adoption of Regulations; Penalty for Violations

Sec. 2. (a) The commissioners court of any county by order may adopt regulations applicable to the practice of massage and operation of massage establishments in unincorporated territory in the county.

(b) Regulations adopted under this Act may:

(1) require the licensure by the county of massagers and massage establishments and establish reasonable requirements and fees for obtaining a license;

(2) establish standards applicable to the practice of massage and the operation of massage establishments designed to protect public health;

(3) provide procedures for suspending or cancelling the licenses of massagers and massage establishments for violation of a regulation adopted under this Act, for the conviction of an offense defined in Chapter 43, Penal Code, or for the conviction of any other offense reasonably indicating the licensee's unfitness to practice massage or operate a massage establishment;

(4) provide for the inspection of massage establishments;

(5) provide reasonable standards for clothing worn by persons employed by a massage establishment; and

(6) establish any other reasonable procedures or prohibitions consistent with the police power to protect the public health and safety and to prevent violations of state law.

(c) A person who violates a regulation adopted under this Act commits a Class B misdemeanor.

Exemptions from Act

Sec. 3. (a) Ordinances adopted under this Act do not apply to a licensed physical therapist, a licensed athletic trainer, a licensed cosmetologist, or a licensed barber performing functions authorized under the license held, nor do ordinances adopted under this Act apply to a licensed physician or chiropractor, or any individual working under the direct supervision of a licensed physician or chiropractor, while engaged in practicing the healing arts.

(b) Ordinances adopted under this Act do not apply to the administration of massage for therapeutic purposes in a hospital, nursing home, or other health care facility.

Inspection and Licensing Officer; Enforcement

Sec. 4. The county commissioners court shall designate the sheriff of the county as the inspection and licensing officer under this Act. Any peace officer certified by the State of Texas may enforce the regulations.

Severability

Sec. 5. In case any one or more of the sections, provisions, clauses, or words of the Act or the appli-

cation of such sections, provisions, clauses, or words 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 the Act or the application of such sections, provisions, clauses, or words to any other situation or circumstance, and it is intended that the 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 1977, 65th Leg., p. 651, ch. 242, §§ 1 to 5, eff. May 25, 1977.]

TITLE 45

COURTS—JUSTICE

CHAPTER TWO. INSTITUTION OF SUIT

Art. 2390. Suits, Where Brought

Every suit in the justice court shall be commenced in the county and precinct in which the defendant or one or more of the several defendants resides, except in the following cases and such other cases as are or may be provided by law:

1. Cases of forcible entry and detainer must be brought in the precinct where the premises, or a part thereof, are situated.

2. Suits against executors, administrators and guardians as such must be brought in the county in which such administration or guardianship is pending, and in the precinct in which the county seat is situated.

3. Suits against counties must be brought in such county and in the precinct in which the county seat is situated.

In the following cases the suit may, at the plaintiff's option, be brought either in the county and precinct of the defendant's residence or in that provided in each exception:

4. (a) Suits upon a contract in writing promising performance at any particular place, may be brought in the county and precinct in which such contract was to be performed, provided that in all suits to recover for labor actually performed, suit may be brought and maintained where such labor is performed, whether the contract for same be oral or in writing.

(b) Suits by creditors upon contracts for goods, services, or loans, intended primarily for personal, family, household, or agricultural use may only be brought in the county and precinct in which the contract was signed or in the county and precinct of the defendant's residence, notwithstanding any provision in the contract to the contrary.

5. Suits for the recovery of rents may be brought in the county and precinct in which the rented premises, or a part thereof are situated.

6. Suits for damages for torts may be brought in the county and precinct in which the injury was inflicted.

7. Suits against transient persons may be brought in any county and precinct where such defendant is to be found.

8. Suits against non-residents of the State or persons whose residence is unknown, may be brought in the county and precinct where the plaintiff resides.

9. Suits for the recovery of personal property may be brought in any county and precinct in which the property may be.

10. Suits against private corporations, associations and joint stock companies may be brought in any county and precinct in which the cause of action or a part thereof arose, or in which such corporation, association or company has an agency or representative, or in which its principal office is situated.

11. Suits against railroad and canal companies, or the owners of any line of transportation vehicles of any character, for any injury to person or property upon the road, canal, or line of vehicles of the defendant, or upon any liability as a carrier, may be brought in any precinct through which the road, canal or line of vehicles may pass, or in any precinct where the route of such railroad, canal, or vehicle may begin or terminate.

12. Suits against fire, marine or inland insurance companies may be brought in any county and precinct in which any part of the insured property was situated; and suits against life and accident insurance companies or associations may be brought in the county and precinct in which the persons insured, or any of them resided at the time of such injury or death.

13. Suits against the owners of a steamboat or other vessel may be brought in any county or precinct where such steamboat or vessel may be found, or where the cause of action arose or the liability was contracted or accrued. In every suit commenced in a county or precinct in which the defendants or one of them may reside, it shall be affirmatively shown in the citation or pleading, if any, that such suit comes within one of the exceptions named in this article.

[Amended by Acts 1977, 65th Leg., p. 1963, ch. 783, § 1, eff. June 16, 1977.]

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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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(c)	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 organ-

izations 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 certainty 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.

(c) The Credit Union Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1983.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1841, ch. 735, § 2.068, eff. Aug. 29, 1977.]

¹ Article 5429k.

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 manage-

ment 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

Article

2525a. Application of Sunset Act [NEW].

Art. 2525a. Application of Sunset Act.

The State Depository Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1983.

[Added by Acts 1977, 65th Leg., p. 1842, ch. 735, § 2.072, eff. Aug. 29, 1977.]

¹ Article 5429k.

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 State 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 evidenced 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.

A custodian bank, holding in trust securities of a State Depository bank pledged to secure funds deposited by the State Treasurer in the State Depository bank as provided above, shall also have the option of depositing said pledged securities with the Federal Reserve Bank of Dallas provided that the Federal Reserve Bank of Dallas is the third party to the transaction; such securities to be held by said Federal Reserve Bank to secure funds deposited by the State Treasurer in the State Depository bank. When such pledged securities held by a custodian bank 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 custodian bank for whose account the pledged securities are so deposited, and an Advice of Transaction or other document evidencing each deposit of securities shall be issued by the Federal Reserve Bank of Dallas to the custodian bank. The custodian bank shall immediately issue and deliver to the State Treasurer controlled trust receipts for said pledged securities. The trust receipt shall reflect that the custodian bank has deposited with the Federal Reserve Bank of Dallas the pledged securities held in trust for 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; Acts 1977, 65th Leg., p. 560, ch. 196, § 1, eff. May 20, 1977.]

TITLE 51

ELEEMOSYNARY INSTITUTIONS

CHAPTER ONE. GENERAL PROVISIONS

Art. 3183a. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(4), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

CHAPTER TWO. STATE HOSPITALS

Article

3201-4. Transfer of control of East Texas Chest Hospital [NEW].

Art. 3196a. Classes of Patients Admitted

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

Persons Chargeable with Expenses of Patients

Sec. 2. Where the patient has no sufficient estate of his own, he shall be maintained at the expense:

Of the husband or wife of such person, if able to do so;

Of the father or mother of such person, if able to do so, provided such person is less than 18 years old.

[See Compact Edition, Volume 4 for text of 3 to 7]

[Amended by Acts 1977, 65th Leg., p. 264, ch. 125, § 1, eff. Aug. 29, 1977.]

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.]

Art. 3201a-4. Transfer of Control of East Texas Chest Hospital

Intent of Act

Sec. 1. By this Act the legislature does intend:

(1) that the East Texas Chest Hospital shall continue to serve as a "state tuberculosis hospital" under the terms and provisions of the Texas Tuberculosis Code;¹

(2) that the Texas Department of Health resources² shall continue to have the authority and power to assign and send tuberculosis patients to the East Texas Chest Hospital for treatment and/or hospitalization under the terms and provisions of the Texas Tuberculosis Code;

(3) that The University of Texas System shall provide and pay for the care and treatment of tuberculosis patients in the East Texas Chest Hospital out of such funds as the legislature may appropriate for the hospital to use for that purpose;

(4) that The University of Texas System shall honor and perform all existing contracts heretofore entered into by, for, or on behalf of the East Texas Chest Hospital, including but not limited to the existing contracts covering the training and education of osteopathic resident physicians at the East Texas Chest Hospital;

(5) that if future contracts are required to provide for the care and treatment of the outpatients of the

East Texas Chest Hospital, The University of Texas System shall pay for that care and treatment out of such funds as the legislature may appropriate for such hospital to use for that purpose, or The University of Texas System shall transfer to the Texas Department of Health Resources, out of such funds as the legislature may appropriate for the East Texas Chest Hospital to use for that purpose, money to pay for the care and treatment of the outpatients of that hospital, whichever may be appropriate; and

(6) that except for the transfer of the governance and management of the East Texas Chest Hospital from the Texas Board of Health Resources to The University of Texas System, the power and authority of the Texas Department of Health Resources to examine, diagnose, isolate, quarantine, hospitalize, treat, and/or otherwise care for tuberculosis patients under the terms and provisions of the Texas Tuberculosis Code shall remain undiminished, unchanged, and in full force and effect.

¹ Article 4477-11.

² Name changed to Department of Health; see art. 4418g.

Transfer of Control to University of Texas System

Sec. 2. From and after the effective date of this Act, the governance, operation, management, control, and ownership of the East Texas Chest Hospital and all land, buildings, facilities, improvements, equipment, supplies, and property comprising said hospital shall be, and are hereby, transferred from the Texas Board of Health Resources to the Board of Regents of The University of Texas System. Said hospital, land, buildings, facilities, improvements, equipment, supplies, and property shall be governed, operated, managed, and controlled pursuant to such powers, duties, and responsibilities as are now, or as may be hereafter, conferred by law upon the Board of Regents of The University of Texas System for the governance, management, and control of the component institutions comprising said system.

Transfer of Appropriations and Funds

Sec. 3. All appropriations heretofore or hereafter made by the legislature for the use and benefit of the East Texas Chest Hospital under the governance of the Texas Board of Health Resources shall be transferred to the Board of Regents of The University of Texas System for the use and benefit of such hospital, and all other funds held for the use and benefit of the East Texas Chest Hospital shall be similarly transferred.

Validation of Contracts

Sec. 4. All contracts heretofore entered into in behalf of the East Texas Chest Hospital, or in names previously used by such hospital, are hereby ratified, confirmed, and validated for and on its behalf.

Use and Name of Hospital

Sec. 5. The Board of Regents of The University of Texas System is authorized to use the East Texas Chest Hospital as a teaching hospital and is authorized to change the name of the hospital, if and when deemed appropriate, so as to conform to the policies, rules, and regulations of said board.

Chest Diseases

Sec. 6. It shall continue to be the policy of the State of Texas to provide a program of treatment of the citizens of this state who are affected with chest diseases, and in pursuance of that policy the East Texas Chest Hospital shall among other functions continue to serve as the primary facility in this state to conduct research, develop diagnostic and treatment techniques and procedures, provide training and teaching programs, and provide diagnosis and treatment for both inpatients and outpatients with respect to all chest diseases.

Application of Tuberculosis Code

Sec. 7. The East Texas Chest Hospital shall among other functions continue to serve as a "state tuberculosis hospital" under the terms and provisions of the Texas Tuberculosis Code (Article 4477-11, Vernon's Texas Civil Statutes), but insofar as applicable to the East Texas Chest Hospital, Subsections (b) through (e) of Section 12 and all of Section 15, Texas Tuberculosis Code (Article 4477-11, Vernon's Texas Civil Statutes), are repealed.

Repealer

Sec. 8. Chapter 528, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 4477-13, Vernon's Texas Civil Statutes), is repealed, and all other laws or parts of laws in conflict with this Act are repealed to the extent of such conflict.

Effective Date

Sec. 9. The effective date of this Act shall be September 1, 1977.

Severability

Sec. 10. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1977, 65th Leg., p. 752, ch. 282, §§ 1 to 10, eff. Sept. 1, 1977.]

CHAPTER THREE. OTHER INSTITUTIONS

TEXAS SCHOOL FOR THE BLIND

Article

3207d. Early Identification and Registry of Blind and Visually Handicapped [NEW].

Article

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]

Application of Sunset Act

Sec. 1a. The State Commission for the Blind is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1985.

¹ Article 5429k.

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)]

¹ See art. 4413(202).

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; Acts 1977, 65th Leg., p. 1846, ch. 735, § 2.102, eff. Aug. 29, 1977.]

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 organizations 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 treatment 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 3]

Application of Sunset Act

Sec. 3a. The State board of Registration for Professional Engineers is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

Qualifications of Members of Board

Sec. 4. Each member of the Board shall be a citizen of the United States and a resident of this State for a period of 10 years prior to appointment, and shall have been engaged in the practice of the profession of engineering for at least 10 years, two years of which may be credited for graduation from an approved engineering school. Responsible charge of engineering teaching and the teaching of engineering shall be considered as the practice of professional engineering as defined by this Act for purposes of this section and for all other purposes in regard to the administration and enforcement of this Act.

[See Compact Edition, Volume 4 for text of 5 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; Acts 1977, 65th Leg., p. 964, ch. 362, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1836, ch. 735, § 2.033, eff. Aug. 29, 1977.]

Sections 2 and 3 of Acts 1977, 65th Leg., p. 965, ch. 362, provided:

"Sec. 2. If any section, subsection, paragraph, sentence, clause, phrase, or word is this Act, or application thereof to any person or circumstance for any reason is held invalid, such holdings shall not affect the validity of the remaining portions of this Act, and the legislature hereby declares it would have passed such remaining portions of this Act despite such invalidity of any part thereof.

"Sec. 3. All laws or parts of laws in conflict or inconsistent herewith are hereby repealed to the extent of such conflict or inconsistency only."

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 certifi-

cate of such facts under oath of the State Banking Commissioner, the funds shall be subject to conservation and disposition under the terms of this Article. 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 services, 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 59

FEEBLE MINDED PERSONS—PROCEEDINGS IN CASE OF

Art. 3871b. Repealed by Acts 1977, 65th Leg., p.
797, ch. 294, § 69, eff. Jan. 1, 1978

See, now, the Mentally Retarded Persons Act, classified as art. 5547-300.

TITLE 60

FEEDING STUFF

Art. 3881e. Commercial Feed Control Act of 1957

[See Compact Edition, Volume 4 for text of 1 to 6]

Inspection Fee

Sec. 7. (a) For the purpose of administering the Texas Commercial Feed Control Act of 1957, including the cost of equipment and facilities and the cost of inspecting, analyzing, and examining commercial feed manufactured for sale, sold, offered or exposed for sale or otherwise distributed in this state, and the expense of experiments and research relative to the value thereof, persons engaged in the manufacture, sale, or distribution of commercial feeds or the components of commercial feeds shall pay to the Director, at his office in College Station, Texas, an inspection fee of Twelve Cents (12¢) per ton on all such commercial feed. With the approval of the Board of Regents of The Texas A & M University System, the Director may reduce or increase the inspection fee in increments of one cent (1¢) per fiscal year, as needed, to a minimum of Ten Cents (10¢) or a maximum of Twenty-five Cents (25¢) per ton. The inspection fee herein levied shall be deposited in the State Treasury and shall there be set apart as a special fund to be known as the Feed Control Fund, and shall be used with the approval and consent of the Board of Directors of the Agricultural and Mechanical College of Texas for the purposes stated in this Section 7(a) of this Act.

(b) The procedure for paying the inspection fee shall, subject to the approval and consent of the Director, be either by the use of tax tags (or certificates) or by means of the tonnage reporting system or by a combination of both such procedures, and shall, in addition to regulations which the Director 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 the use of the tax tag (or certificate) on any commercial feed which is manufactured for sale, sold, or offered for sale, or otherwise distributed in this state, the manufacturer or any other person who causes it to be manufactured for sale or who sells the same or offers it for sale or makes delivery or distribution of any such commercial feed within the State of Texas, shall affix to each container or package of such commercial feed, except customer-formula feed, and

to the invoice of such customer-formula feed distributed in bulk or otherwise, and to the invoice of each lot of such other commercial feed distributed in bulk, a tag (or certificate), to be furnished by the Director, stating that all charges specified in this Article have been paid, and containing the information provided for in Section 6 of this Act. The Director is hereby authorized, empowered, and directed to prescribe the form and denomination of such tags and certificates; provided, however, that if at any time the actual cost to the Feed Control Service of tags (or certificates), including the printing and handling thereof, should be in excess of fifty percent (50%) of the amount of the inspection fee as provided in this Section 7, the Director may, after giving reasonable notice in such manner as he deems desirable, charge all persons who cause commercial feed to be manufactured, sold, exposed, or offered for sale or otherwise distributed, for the total actual cost of such tags (or certificates) in addition to the inspection fee; and provided further, that on individual containers of five (5) pounds or less, a manufacturer or other person may for each state fiscal year (September 1st to August 31st, inclusive) or any fractional part thereof, pay in advance a fee of Twenty-five Dollars (\$25.00) for each brand of commercial feed manufactured for sale, sold, offered for sale or otherwise distributed in this state, and such manufacturer or other person shall not be required to affix official tags (or certificates) to such containers of the brands of commercial feed so registered.

(d) When the inspection fee is to be paid by means of the Tonnage Reporting System, the Director 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 such reports, and shall issue permits bearing a number assigned by the Director on application therefor to any person who manufactures, sells, offers for sale, or who otherwise distributes or has available for distribution in this state, regardless of the manner, means or circumstances as to its entry, presence or existence within this state, any commercial feed. Each applicant for the issuance of a permit must deposit with the Director cash in the amount of One Thousand Dollars (\$1,000.00) or securities acceptable to and approved by the Director of a value of at least One Thousand Dollars (\$1,000.00), or must post

with the Director a surety bond payable to the State of Texas in the amount of One Thousand Dollars (\$1,000.00), executed by a corporate surety company authorized to do business in Texas and approved by the Director, conditioned upon the faithful performance of the provisions of this Article; or must post with the Director a bond with at least two good and sufficient and solvent personal sureties, payable to the State of Texas in the amount of One Thousand Dollars (\$1,000.00) and approved by the Director, conditioned upon the faithful performance of the provisions of this Article. Each such bond shall be in such form and be effective for such period of time as the Director may prescribe. In addition to all other provisions of this Act, each person who is issued a permit to sell, offer for sale, or otherwise distribute commercial feed and pay the inspection fee in accordance with the tonnage reporting system shall:

(1) Maintain and furnish such records as the Director may require to reflect accurately the total tonnage of all feed handled, and the portion of such tonnage that is sold, offered for sale, or otherwise distributed as commercial feed and is subject to the inspection fee. The Director or his duly authorized representatives shall have permission to examine the records of the permittee at all reasonable times. All records shall be preserved and retained in usable condition, and shall be available for examination by the Director or his representatives for a period of not less than two (2) years unless otherwise authorized by the Director, and the Director may require the retention of such records for a period of more than two years in instances where it is deemed desirable to do so.

(2) File in the office of the Director at College Station, Texas, within thirty (30) days after the close of each quarter year ending with the last day of November, February, May, and August, sworn reports covering the tonnage of all

feed sold during the preceding quarter together with the payment of tax due for such quarter. A penalty of ten per cent (10%) of any tax which is not paid within the time allowed shall be added to the amount of the tax due, and the amount of the tax and the penalty shall constitute a debt, and shall be recoverable out of the bond hereinbefore referred to; provided that the Director may, if he deems it desirable to do so, require additional reports for the purpose of identification and verification of records.

(3) When located outside of the State of Texas and when distributing commercial feed in the State of Texas, maintain in the State of Texas the records and information required by this Section 7(d) of this Act or pay all costs incurred in the auditing of records at a location outside of the state. The Director is authorized and directed to revoke the permit and cancel all registrations of any permittee who fails to comply with this requirement. Itemized statements of costs incurred in any such audits shall be furnished the permittee by the Director promptly upon completion of any such audit, and he must pay the same within thirty (30) days from the date of such statement.

(4) Affix to each container or package of such commercial feed, except customer-formula feed, and to the invoice of each lot of commercial feed, except customer-formula feed, sold or otherwise distributed in bulk a printed statement setting forth the information provided for in Section 6(a) and (b) of this Act.

(5) Affix to the invoice of each customer-formula feed sold or otherwise distributed a statement setting forth the information provided for in Section 6(c) of this Act.

[See Compact Edition, Volume 4 for text of 7(e) to 20]

[Amended by Acts 1977, 65th Leg., p. 1629, ch. 641, § 1, eff. Aug. 29, 1977.]

TITLE 61

FEES OF OFFICE

CHAPTER ONE. GENERAL PROVISIONS

Article

3912i. Secretarial Personnel of District, County or Precinct Officers [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)]

Counties of 750,000 to 1,000,000

(c) In all counties of this state having a population of not less than 750,000 nor more than 1,000,000 according to the last preceding Federal Census, the Commissioners Court shall fix the annual salaries of county courts at law judges in an amount not less than \$25,000 annually and not to exceed nine-tenths of the total annual salary, including supplements, paid any district judge sitting in the county. Salaries fixed by this Section shall be payable in equal monthly installments. Nothing in Chapter 622, Acts of the 62nd Legislature, Regular Session, 1971, as amended (Article 3912k, Vernon's Texas Civil Statutes), applies to judges of the county courts at law.

[See Compact Edition, Volume 4 for text of 8(d) 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; Acts 1977, 65th Leg., p. 187, ch. 93, § 1, eff. May 2, 1977.]

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. 3883i-2. Compensation of Judges; Counties of Not Less Than 1,200,000

Sec. 1. In all counties of this State having a population of not less than one million, two hundred thousand (1,200,000) inhabitants, according to the last preceding Federal census, the Commissioners Court shall 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 not less than One Thousand Dollars (\$1,000) less per annum than the total annual salary, including supplements, 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 2]

[Amended by Acts 1977, 65th Leg., p. 1111, ch. 410, § 1, eff. Aug. 29, 1977.]

Art. 3912e. Method of Compensation of District and Certain Designated County and Precinct Officers

[See Compact Edition, Volume 4 for text of 1 to 12]

Commissioners' Court to Fix Salaries of Certain Officers; Increase

Sec. 13.

[See Compact Edition, Volume 4 for text of 13(a)]

(b) In those counties wherein the county officials are on a salary basis and in which counties there is a criminal district attorney or a county attorney performing the duties of a district attorney, there shall be deposited in the officers salary fund on the first day of September, January and May of each year, such sums as may be apportioned to such county under the provisions of this Act out of the available appropriations, made by the Legislature for such purposes; provided, however, that in counties wherein the Commissioners Court is authorized to determine whether county officers shall be compensated on a salary basis, no apportionment shall be made to such county until the Comptroller of Public Accounts shall have been notified of the order of the

Commissioners Court that the county officers of such county shall be compensated on a salary basis for the fiscal year. It shall be the duty of the Comptroller of Public Accounts to annually apportion to such counties any monies appropriated for said year for such apportionment; each such county entitled to participate in such apportionment shall receive for the benefit of its officers salary fund or funds its proportionate part of the appropriation which shall be distributed among the several counties entitled to participate therein, on the basis of the per capita population of each such county according to the last preceding Federal Census; provided the annual apportionment for such purposes shall be determined as follows: the apportionment shall not exceed Ten Cents (10¢) per capita of said population in those counties under eighty five hundred (8500) inhabitants; the apportionment shall not exceed Seven and One-half Cents (7½¢) per capita of said population in those counties having a population of not less than eighty five hundred (8500) and not more than nineteen thousand (19,000) inhabitants; the apportionment shall not exceed Five Cents (5¢) per capita of said population in those counties having a population of not less than nineteen thousand and one (19,001) and not more than seventy five thousand (75,000) inhabitants and the apportionment shall not exceed Four Cents (4¢) per capita in those counties having a population of over seventy five thousand (75,000) inhabitants. Provided the provisions of this Act shall also apply to Harris County for the constitutional office of the District Attorney for the Criminal District Court of Harris County at not to exceed Four Cents (4¢) per capita. The Comptroller shall, at the option of the criminal district attorney, pay directly to the criminal district attorney in all counties with a population in excess of six hundred thousand (600,000) inhabitants according to the last preceding Federal Census a sum equal to the sum authorized in the general appropriations bill for district attorneys. Such sum shall be paid in twelve (12) equal installments on the first day of each month. Any such sums so paid shall be deducted from any sum due to said county under the provisions of this Act. In no event shall the total salary and allowances of the criminal district attorney of any such county from all sources be less than the salary of such criminal district attorney paid by said county on the effective date of this Act.

[See Compact Edition, Volume 4 for text of 13(c) to 23]

[Amended by Acts 1977, 65th Leg., p. 1489, ch. 604, § 1, eff. Aug. 29, 1977.]

The 1977 Act, amending § 13(b) of this article, provides in §§ 2 and 3 as follows:

"Sec. 2. All laws or portions thereof in conflict with the provisions of this Act are hereby repealed to the extent of such 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 provisions or applications of the Act which can be given effect without the invalid provision."

Art. 3912f-7. Longevity Pay for Deputy Sheriffs in Counties of Not Less Than 150,000

(a) The commissioners court of each county in this state with a population of not less than 150,000, according to the last preceding federal census, shall provide longevity pay for each commissioned deputy of the sheriff's department in accordance with this Act.

(b) Each commissioned deputy shall receive, in addition to his regular compensation, longevity pay of not less than \$5 per month for each year of service in the department. Years of service in excess of 25 do not count for the purposes of this subsection.

[See Compact Edition, Volume 4 for text of (c)]
 [Amended by Acts 1977, 65th Leg., p. 1091, ch. 400, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 amendatory act provided:
 "In counties required for the first time to provide longevity pay for deputy sheriffs because of this amendatory Act, the requirement is not mandatory until the first day of the first county fiscal year beginning after this Act takes effect."

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. 3914. Secretary of State

The Secretary of State is authorized and required to charge for the use of the State the following other fees:

For each commission to every officer elected or appointed in this State, Two Dollars (\$2), except a notary public commission, Four Dollars (\$4).

For each official certificate, Two Dollars (\$2).

For each warrant of requisition, Two Dollars (\$2).

For each remission of fine or forfeiture, One Dollar (\$1).

For copies of any paper, document, or record in this office, fifty cents (50¢) per legal size page.

For recording each contract for the conditional sale, lease or hire of railroad equipment and rolling stock, and for recording each description of performance of such contract, Five Dollars (\$5); and for entering such declaration on the margin of the record of such contract, One Dollar (\$1).

For recording each certificate of consolidation of cities, and for recording each certificate of adoption of a city charter or amendment under the "Home Rule Act," fifty cents (50¢) per legal size page; provided such fee shall not be less than Two Dollars (\$2).

[Amended by Acts 1977, 65th Leg., p. 1291, ch. 509, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 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 to 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. 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	3.00
Relinquishment Act Oil and Gas Lease	5.00
Transfer or Release of each Mineral Award, Mineral Prospect Permit, Grazing Lease, or Mineral Lease or part thereof—for each file affected	3.00
Servicing and Filing Easement—State-owned Land	5.00
Servicing and Filing Grazing Lease—State-owned Land	1.00
Prospect Permits	1.00

PREPARATION OF CERTIFICATES OF FACT

Certificates of Facts involving examination of one (1) file	4.00
Each additional file	1.50
Each other certificate not otherwise provided for	3.00

CERTIFIED PHOTOSTATIC COPIES

Certificate of the class of Toby Scrip ..	2.50
All other Land Certificates	1.00
Applications for Survey	1.50
Field Notes, 2 pages or less	1.50
Each additional page of field notes	1.00
Certificate of Correction	1.00
Surveyors' Report—per page	1.00
Mineral Application	1.50
Vacancy Application	2.00
Mineral Permit or Mineral Lease	2.50
Purchase Application and Obligation ..	1.50
Purchase Application, surveyed land ...	1.00
Obligation for Deferred Payment on Land	1.00
File Wrapper	1.00

CERTIFIED PHOTOSTATIC COPIES—Cont'd

Proof of Occupancy	\$ 1.50
Deed, Bond for Title, Power of Attorney, Decree of Court or other similar instrument, 4 pages or less	2.50
Each additional page	1.00
Patent	1.50
Deed of Acquittance	1.50
Affidavit of Settlement, Non-settlement and Rebuttal Affidavits, each	1.00
Other Affidavits	1.50
Grazing Lease Application or Contract Letters and Impressions of Letters—One page	1.50
Each additional page50
Extract of Muster Roll, Traveling Land Board Reports, Clerk's returns relating to Land Certificates, Patent Delivery Books, School Land Sales, records and books and other similar records, each	2.50
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	1.50
Title Opinions, 2 pages or less	1.00
Each additional page	1.00

MAPS

Blue Print, White Print, or other Cloth Map of any county	6.00
Blue or White Print Paper Map of any county	3.00
Blue Print, White Print, or other Cloth Map of an inland bay	7.00
Blue or White Print Paper Map of an inland bay	3.50
Blue Print, White Print, or other Cloth Map of Gulf of Mexico	10.00
Blue or White Print Paper Map of Gulf of Mexico	5.00
Certificate on either Cloth or Paper Map	1.00
Plain or certified copy of a portion of a map or sketch or plat made by print or hand, and for a working sketch, the fee shall be determined by the amount of material used and the time consumed, at the rate of, per hour	3.00
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"	1.00
18" x 12"	1.25
18" x 15"	1.50
18" x 20"	2.00
18" x 24"	2.50

SPANISH TRANSLATIONS

Translation of any Spanish document such as Titles and field notes, Three Cents (3¢) per word, provided that no charge shall be less than	5.00
Certificate of Fact concerning Spanish Titles	5.00

PATENT AND DEED OF ACQUITTANCE FEES

Patent Fee	15.00
Deed of Acquittance Fee	15.00

[Amended by Acts 1975, 64th Leg., p. 580, ch. 236, § 1, eff. May 20, 1975.]

Art. 3927. District Clerk

The clerks of the district courts shall receive the following fees for their services:

(1) The fees in this Subsection shall be due and payable, and shall be paid at the time suit or action is filed.

For each suit filed, including appeals from inferior courts -- \$25.00

For each cross action, intervention, contempt action or motion for new trial filed ----- \$15.00

For issuing each subpoena, including one (1) copy thereof, when requested at the time a suit or action is filed ----- \$ 4.00

For issuing each citation or other writ or process not otherwise provided for, including one (1) copy thereof, when requested at the time a suit or action is filed ----- \$ 8.00

For issuing each additional copy of any process, not otherwise provided for, when requested at the time a suit or action is filed ----- \$ 4.00

(2) The fees in this Subsection shall be due and payable at the time or times of performance or request for performance of services; shall be an obligation of the party to the suit or action initiating the request,

and shall be additional to the fees provided for in Subsection (1) of this Act; provided, however, that the District Clerk may accept bond or bonds as security therefor.

For issuing each subpoena not provided for in Subsection (1) including one (1) copy thereof ----- \$ 4.00

For issuing each citation, commission for deposition, writ of execution, order of sale, writ of execution and order of sale, writ of injunction, writ of garnishment, writ of attachment, writ of sequestration not provided for in Section 1, or any other writ or process not otherwise provided for, including one (1) copy thereof when required by law ----- \$ 8.00

For issuing each additional copy of any writ or process not otherwise provided for --- \$ 4.00

For searching the files or records, fees may be charged:

- a. To locate any one cause when the person requesting same does not furnish the docket number of said cause, or
- b. To ascertain the existence or nonexistence of any instrument or record in his office ----- \$ 5.00

For issuing certificate to any fact or facts contained in the records of his office ----- \$ 2.00

For issuing deposition each one hundred (100) words ----- \$.20

For issuing interrogatories with certificate and seal, per page or portion thereof ----- \$ 1.00

For abstracting judgment -- \$ 4.00

For approving each bond ---- \$ 4.00

For making copy of all records, judgments, orders, pleading, or papers on file or of record in his office, whether certified or not, for any person applying for same, including the certificate and seal, per page or portion thereof ----- \$ 1.00.

[Amended by Acts 1977, 65th Leg., p. 608, ch. 219, § 1, eff. May 24, 1977.]

Art. 3930. County Clerk and County Recorders

County clerks and county recorders are hereby authorized and required to collect the following fees for services rendered by them to all persons, firms, corporations, legal entities, governmental agencies and/or governmental representatives:

Fees for County Clerk and County Recorder Records and Miscellaneous Services

(1) For filing, or filing and registering, including indexing, each instrument, document, legal paper, or record (excepting notaries public records, marriage records, vital statistics records, and those instruments, documents, legal papers and records filed in the county civil courts records, or in the county criminal courts records, or in the probate courts records, and those instruments, documents, legal papers and records filed and recorded in the real property records in the office of the county clerk, and those instruments the filing fee for which is fixed in the Business & Commerce Code), authorized, permitted, or required, to be filed, or filed and registered, in the personal property, chattels and personal records in the office of the county clerk and county recorder, a fee or fees, as follows:

(a) For each such instrument, document, legal paper, or record, a fee, which shall be in addition to any and all specific fee or fees provided for in any and all other statute or statutes, of ----- \$ 2.00

(2) For filing and recording, including indexing not more than five (5) names, each instrument, document, legal paper, or record (excepting map records, condominium records, notaries public records, marriage records, vital statistics records, and those instruments, documents, legal papers and records filed in the county civil courts records, or in the county criminal courts records, or in the probate courts records, or in the personal property, chattels and personal records in the office of the County Clerk) authorized, permitted, or required, to be filed and recorded in the real property records in the office of the county clerk and county recorder, a fee, or fees, as follows, which fee, or fees, shall be in addition to any specific fee, or fees, provided for in any other statute, or statutes:

(a) For the first page, a fee of ----- \$ 3.00

(b) Plus, for each additional page, or part of a page, on which there are visible marks of any kind, a fee of ----- \$ 2.00

(c) Plus a fee for each 8½" x 14", or part thereof, of attachment or rider, to be charged for each such attachment or rider, of ----- \$ 2.00

(d) Plus, for each additional name that has to be indexed in excess of a total of five (5) names indexed for all records in which an instrument, document, paper or record must be indexed, a fee of ----- \$ 0.25

(e) Provided, however, that a county clerk and county recorder who files, registers, or records by copying the instrument manually, and not by a photocopy, photostatic or microphotographic process, in his discretion may substitute, in lieu of the per page fee prescribed by this Act, for each page of such a legal instrument, document or paper having more than 500 words on it, a fee per one hundred words of ----- \$ 0.20

(3) For issuing each certified copy (except certified copy of map records and condominium records), notice, statement, license where the fee for issuing the license is not specifically provided by statute, or any other instrument, document, or paper authorized, permitted, or required, to be issued by said county clerk or county recorder, except as otherwise provided in Section 1, of this Act:

For each page, or part of a page, a fee, to be paid in cash at the time each order is placed, of ----- \$ 1.00 plus \$1.00 for the county clerk's certificate.

However, nothing in this Act shall be construed to limit or deny to any person, firm, or corporation, full and free access to any papers, documents, proceedings and records referred to in this Act, the right of such parties to read and examine the same, and to copy information from any microfilm or other photographic image, or other copy thereof under reasonable rules and regulations of the county clerk at all reasonable times during the hours the county clerk's office is open to the public, and without making payment of any charge, being hereby established and confirmed.

(4) For issuing each certified copy of birth certificate or death certificate a fee of ----- \$ 2.00

(5) For approving bond, except notarial bonds and bonds required to be approved in County Civil Courts, County Criminal Courts and Probate Courts, a fee, to be paid at the time of said approval, of ----- \$ 3.00

(6) For all clerical work in having appointment of notary public made, administering oaths and qualifying the notary public, and approving, filing and recording notarial bond, a fee (does not include the fee for the Secretary of State), to be paid at the time the executed oath and bond is filed, of ----- \$ 4.00

(7) For issuing each marriage license, including all and every

service relating thereto and including, but not limited to, preparing the application, filing health certificates, administering oaths, filing waivers and orders of county judge, issuing license and recording all papers including the return of the license, a total fee, to be paid at the time the license is issued, of ----- \$ 7.50

(8) For registering a brand, including indexing, search, and issuing the certificate, a fee of ----- \$ 5.00

(9) For administering each oath, with or without a seal of clerk, except oaths required to be administered in duties as Clerk of County Civil Courts, County Criminal Courts and Probate Courts, a fee of \$ 1.00

(10) For such other duties prescribed, authorized, and/or permitted by the Legislature for which no fee is set by this Act, reasonable fees shall be charged.

[Amended by Acts 1977, 65th Leg., p. 763, ch. 291, § 1 eff. Aug. 29, 1977.]

Art. 3930a-1. County Clerks and County Recorders—Other Services

(1) In addition to the fees authorized and required by Article 3930 of this title, as amended, county clerks and county recorders are authorized and required to collect the fees specified by this article for services rendered by them to all persons, firms, corporations, legal entities, governmental agencies, and governmental representatives. Unless otherwise specified, each fee shall be collected at the time the service is rendered.

(2) A total fee of \$7.50 shall be collected for services rendered in connection with the execution of each declaration of informal marriage under Section 1.92 of the Family Code.

[Amended by Acts 1977, 65th Leg., p. 765, ch. 291, § 2, eff. Aug. 29, 1977.]

Art. 3930(b). County Clerks and Clerks of County Courts

Sec. 1. County clerks and clerks of county courts are hereby authorized and required to collect the following fees for services rendered by them to all persons, firms, corporations, legal entities, governmental agencies and/or governmental representatives:

A. Fees for County Civil Court Dockets

(1) For each cause or action, or docket in County Civil Courts: for filing, or filing and registering, or filing and recording, and for docketing and including taxing costs for each and all applications, complaints, petitions, returns, documents, papers, legal instruments, records and/or proceedings; for issuing, including the record-

ing of the return thereon, each and all citations, notices, subpoenas, commissions to take depositions, executions while the docket is still open, garnishments before judgments, orders, writs, processes, or any and all other instruments, documents or papers authorized, permitted or required to be issued by said county clerk or said clerk of county courts on which a return must be recorded; for all attendances in court as clerk of court; for impaneling a jury; for swearing witnesses; for approving bonds involved in court actions; for administering oaths; and for all other clerical duties in connection with such county civil court docket:

(a) For each original cause or suit in a County Civil Court, including, but not limited to, appeals from Justice of the Peace Courts or Corporation Courts and transfers of causes or suits from other jurisdictions, a fee to be due and payable, and to be paid by the plaintiff or plaintiffs, or appellant or appellants, at the time said cause or suit is filed, started or initiated, which fee is to be paid but one time in each cause or docket, or suit, and which fee excludes the items listed in Paragraphs B, C, D, and E of this Section 1:

(i) For causes or dockets involving damages, debts, specific performance of contracts and agreements, pleas of privilege, appeals from Justice of the Peace Courts and Corporation courts, for appeals from driver's license suspension, and other causes of action not otherwise listed in this Paragraph A(1)(a): a fee of ----- \$10.00

(ii) For eminent domain, or condemnation proceedings, with or without objections: a fee of ----- \$25.00

(iii) For garnishments after judgment: a fee of ----- \$12.50

(d) For each interpleading, or cross-action, or any other action other than the original action, in a cause or suit in a County Civil Court, a fee to be due and payable, and to be paid by the party or parties starting or initiating each such interpleading, or other action, or cross-action, at the time of starting or initiating each such cross-action or interpleading, or other action, which fee is to be paid but one time for each such cross-action, or interpleading, or other action, but excluding items listed in Paragraphs

B, C, D and E of this Section 1: a fee of ----- \$10.00

B. Fees for Probate Court Dockets

(1) For each cause or action, or docket in Probate Courts: for filing, or filing and registering, or filing and recording, and for docketing and including taxing costs for each and all applications, wills, complaints, petitions, returns, documents, papers, legal instruments, records and/or proceedings; for issuing, including the recording of the return thereon, each and all citations, notices, subpoenas, commissions to take depositions, orders, writs, processes, or any and all other instruments, documents, or papers authorized, permitted or required to be issued by said county clerk or said clerk of probate courts on which a return must be recorded; for all attendances in court as clerk of court; for swearing witnesses; for approving bonds involved in court actions; for administering oaths; and for all other clerical duties in connection with such probate court docket:

(a) For each original cause or action in a Probate Court, a fee to be due and payable and to be paid by the party or parties starting or initiating said cause or estate action, or with the permission of the court, payable at the time of qualifying of the legal or personal representative of such cause or estate action, or when a Veterans' Administration Chief Attorney is attorney of record in a cause, payable when the legal or personal representative of such cause or estate action receives funds with which to make such payment, for such services for the period of time as shown, and which fee excludes the items listed in Paragraphs A, B(1)(b), B(1)(d), C, D and E of this Section 1:

(i) For probating will with independent executor; for administration with will attached, for administration of an estate, for guardianship or receivership of an estate, for muniment of title, a fee for one year from the starting or initiating such cause of action: a fee of \$25.00

(ii) For community survivors: a total fee of ----- \$20.00

(iii) For small estates: a total fee of ----- \$ 5.00

(iv) For affidavits of heirship, including filing of affidavit, after approval by Judge, in Small Estates Records in the Recorder's Office: a total fee of ----- \$ 7.50

(v) For mentally ill: Total costs for all services listed in Article 5547—13, Article 5547—14 and Article 5547—15, Vernon's Civil Statutes of Texas, shall be in the amount of ----- \$40.00

(b) For each probate docket remaining open after its first anniversary date, the following fees shall be paid in cash at the time earned, which fee shall be separate and apart from other fees listed in Paragraphs A, B, C, D and E of this Section 1 hereof:

(i) For filing, or filing and recording, of each instrument of writing, legal document, paper or record in an open Probate Docket after its first anniversary date: a fee of ----- \$ 4.00

(ii) For approving and recording each bond relating only to an open Probate Docket after said Docket's first anniversary date, a fee of ----- \$ 3.00

(iii) For administering each oath relating to an open Probate Docket after said Docket's first anniversary date, a fee of \$ 2.00

(c) For each adverse action or contest, other than the filing of a claim against an estate, in a clause or docket in a probate court, a fee to be due and payable and to be paid by the party or parties starting or initiating such adverse action or contest, but excluding other items listed in Paragraphs A, B, C and D of this Section 1, of ----- \$25.00

(d) For filing and entering each claim against an estate in the claim docket, a fee, to be paid by claimant at the time of filing such claim, of ----- \$ 2.00

C. Where no cause is pending, as is contemplated in Section 1, Paragraphs A and B hereof, the clerk shall charge as follows for the hereinafter listed services, for issuing (including recording of the returns thereon), each citation, notice, commission to take depositions, execution, order, writ, process, or any other instrument, document, or paper authorized, permitted or required to be issued by said county clerk or said clerk of county courts on which a return must be recorded:

(i) For issuing each such instrument, document, or paper, including the original and one copy and the recording of the return, a fee, to be paid at the time each order is placed, of -- \$ 4.00

(ii) For issuing for the same docket at the same time more than one set of one original and one copy of the same instrument, document, or paper, including recording the return thereon, a fee, per set, to be paid at the time the order is placed, of ----- \$ 4.00

D. For issuing each certificate, certified copy, notice, statement, transcript, or any other instrument, document, or paper authorized, permitted, or required, to be issued by said county clerk or clerk of county courts on which there is no return to be recorded:

For each page, or part of a page, a fee, to be paid at the time each order is placed, of -- \$ 1.00 plus \$1.00 for the clerk's certificate.

However, nothing in this Act shall be construed to limit or deny to any person, firm, or corporation, full and free access to any papers, documents, proceedings, and records referred to in this Act, the right of such parties to read and examine the same, and to copy information from any microfilm or other photographic image, or other copy thereof under reasonable rules and regulations of the county clerk at all reasonable times during the hours the county clerk's office is open to the public, and without making payment of any charge, being hereby established and confirmed.

E. For issuing each Letter Testamentary, Letter of Guardianship, Letter of Administration and each Abstract of Judgment a fee of ---- \$ 2.00

F. For filing and keeping "Wills Held for Safekeeping", a fee, to be paid at the time said wills are filed, of ----- \$ 5.00

Sec. 2. If the final judgment has not been entered for a docket, or cause, in a county civil court on the date this Act becomes effective, the amount of costs for such docket, or cause, accruing to such effective date shall be paid in full before final judgment is filed or recorded, and no further costs shall accrue in each such docket, or cause, after said effective date, except that the fees specified in Paragraphs A(1)(a)(iii), A(1)(b), C, D, and E of Section 1, for items and services therein specified shall apply after said effective date to each of such dockets, or such causes, and shall be paid in accordance with the provisions of said paragraphs. If the final judgment has not been entered for a docket, or cause, or estate action, in a probate court on the date this Act becomes effective, the amount of costs for such docket, or cause, or estate action, accruing to such effective date shall be paid in full, and no further

costs shall accrue, prior to the next anniversary date of such docket, or cause, or estate action, except that the fees specified in Section 1, Paragraphs B(1)(b), B(1)(c), B(1)(d), and C, D, and E of Section 1, for items and services therein specified shall apply after said effective date to such dockets, or such causes, or such estate actions, and shall be paid in accordance with the provisions of said paragraphs. Any deposit balance or balances left after applying all costs accrued through the date this Act becomes effective, including the adjustments stipulated hereinabove, for a docket, or cause, shall be refunded without delay and all further fees and charges shall be paid for at the time of filing, or issuing, or otherwise becoming due and payable. Said clerk shall continue to collect, at the time said fees or costs accrue, or are earned, or are payable, all fees, or costs, authorized, or required, to be collected by said clerk, including, but not limited to: law library fees, county judge's fees, county judge's commissions, jury fees, and fees for state officials.

[Amended by Acts 1977, 65th Leg., p. 765, ch. 291, § 3, eff. Aug. 29, 1977.]

Art. 3930(c). Specifications for Legal Papers for Filing and for Recording

Sec. 1. (a) Each legal paper offered or presented to a county clerk and county recorder for filing or for recording other than fees authorized in Article 3930(b), Revised Civil Statutes of Texas, 1925, should meet the requirements specified in Subsections (b) through (g) of this section.

(b) A page is defined as one side of a sheet of paper, no more than 8½ inches wide and 14 inches long, of sufficient weight and substance that printing or typing or handwriting thereon will not smear or "bleed-through," and the paper shall be suitable otherwise for reproducing from it a readable record by photocopy or photostatic or microphotographic process or processes used in the offices of county clerks.

(c) A clearly identifying heading, similar to the headings on most commercially supplied printed forms, shall be placed at the top of the first page to identify the type or kind of legal paper.

(d) Printing and typing and handwriting shall be clearly legible.

(e) Names shall be legibly typed or printed immediately under each signature.

(f) All photostats, photocopies, and other types of reproduction shall have black printing, typing, or handwriting on a white background, commonly known as positive prints.

(g) Riders and attachments shall not be larger than the size of the page as defined in this article.

Not more than one rider or attachment shall be included in or attached to a page.

Sec. 2. (a) The filing fee or recording fee for each page of a legal paper which is offered or presented for filing or for recording to a county clerk or county recorder and which fails to meet the requirements for, or which is deficient in, one or more of the items specified in Section 1 of this article, shall be equal to twice the regular filing fee or recording fee provided by statute for that page.

(b) When a page of a legal paper has more riders or attachments than one, the filing fee or recording fee for each attachment in excess of one is twice the regular filing fee or recording fee provided by statute.

(c) When a page of a legal paper has one or more riders or attachments larger than the size of a page as defined in Section 1(b) of this article, the filing fee or recording fee for each oversized attachment is twice the regular filing fee or recording fee provided by statute for the attachment.

[Added by Acts 1977, 65th Leg., p. 768, ch. 291, § 4, eff. Jan. 1, 1978.]

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 Thousand 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. 3935. Justice of the Peace

Justices of the peace are required to collect the following fees for services rendered by them to all persons, firms, corporations, legal entities, governmental agencies, or governmental representatives:

A. Fee before entry of judgment:

For each original cause or action, cross-action, third-party action or intervention in the justice civil courts: for filing, or filing and registering, or filing and recording, and for docketing and including taxing costs for each and all applications, complaints, petitions, returns, documents, papers, legal instruments, records or proceedings; for issuing, including the recording of the return thereon, each and all citations, notices, subpoenas, commissions to take depositions, orders, writs, processes, or any and all other instruments, documents or papers authorized, permitted or required to be issued by the justices of the peace on which a return must be recorded; for causing juries to be summoned and swearing them, and receiving and recording jury verdicts; for swearing witnesses; for approving bonds involved in court actions; for administering oaths; for rendering and recording judgment;

and for all other clerical duties in connection with such justice of the peace court docket: a fee of \$ 7.00

The fee is due and payable, and is to be paid by the plaintiff or plaintiffs, or the party or parties initiating the action, cross-action, third-party action, intervention, or other action, at the time of starting each action, cross-action, third-party action, intervention, or other action, and is to be paid but one time for each action, cross-action, third-party action, intervention, or other action.

B. Fees after entry of judgment:

For making and certifying a transcript of the entries on their dockets, and filing the transcript, together with the original papers in the case, in the proper court, in each case of appeal or certiorari, a fee of ----- \$ 2.00

For issuing abstract of judgment, a fee of ----- 1.00

For issuing and recording a return thereon, for each execution, order of sale, writ of restitution, or other writ or process not otherwise herein provided for, a fee of ----- 2.00

For issuing each certificate, certified copy, notice, statement, or any other instrument, document, or paper authorized, permitted, or required to be issued by the justices of the peace on which there is no return to be recorded:

For each page or part of a page, a fee, to be paid at the time each order is placed, which shall not exceed the costs for copies as designated by the State Board of Control in accordance with Section 9(a), Article 6252-17a, Vernon's Texas Civil Statutes.

[Amended by Acts 1977, 65th Leg., p. 655, ch. 245, § 1, eff. Aug. 29, 1977.]

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 62

FENCES

Arts. 3954-1 to 3954-4. Repealed by Acts 1977,
65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(5), eff.
Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

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 68A

GOOD NEIGHBOR COMMISSION OF TEXAS

Art. 4101-2. Good Neighbor Commission Continued; Powers and Duties; Compensation; Expenses

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

Application of Sunset Act

Sec. 1a. The Good Neighbor Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission

is abolished, and this Act expires effective September 1, 1979.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 2 to 7]

[Amended by Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.007, eff. Aug. 29, 1977.]

TITLE 70

HEADS OF DEPARTMENTS

CHAPTER ONE. SECRETARY OF STATE

Article

4330a. Application of Sunset Act [NEW].

Art. 4330a. Application of Sunset Act

The office of secretary of state is subject to the Texas Sunset Act,¹ but it is not abolished under that Act. The office shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1989 and of every 12th year after 1989 are reviewed.

[Added by Acts 1977, 65th Leg., p. 1856, ch. 735, § 2.173, eff. Aug. 29, 1977.]

¹ Article 5429k.

CHAPTER TWO. COMPTROLLER OF PUBLIC ACCOUNTS

Article

4351b. Miscellaneous Claims [NEW].

Art. 4348a. Preparation of Financial Statements and Itemized Estimates; Probable Receipts and Disbursements; Committee on State Revenue Estimates

[See Compact Edition, Volume 4 for text of a and b]

c. The Committee on State Revenue Estimates is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the committee is abolished effective September 1, 1989. [Amended by Acts 1977, 65th Leg., p. 1855, ch. 735, § 2.169, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 4350. Warrants on Treasurer

No warrant shall be issued to any person indebted or owing delinquent taxes to the State, or to his agent or assignee, until such debt or taxes are paid. [Amended by Acts 1977, 65th Leg., p. 1715, ch. 682, § 1, eff. June 15, 1977.]

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 considered 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.]

Art. 4365. Duplicate Warrants

The Comptroller, when satisfied that any original warrant drawn upon the State Treasurer has been lost, destroyed, or stolen, or that the payee's en-

dorsement on the original warrant has been forged, or when any certificate or other evidence of indebtedness approved by the auditing board of the State has been lost, is authorized to issue a duplicate warrant in lieu of the original warrant or a duplicate or a copy of such certificate, or other evidence of indebtedness in lieu of such original; but no such duplicate warrant, or other evidence of indebtedness, shall issue until the applicant has filed with the Comptroller his affidavit, stating that he is the true owner of such instrument, and that the same is in fact lost, destroyed, or stolen, or that the payee's endorsement on the instrument has been forged, and shall also file with the Comptroller his bond in double the amount of the claim with two or more good and sufficient sureties, payable to the Governor, to be approved by the Comptroller, and conditioned that the applicant will hold the State harmless and return to the Comptroller, upon demand being made therefor, such duplicates or copies, or the amount of money named therein, together with all costs that may accrue against the State on collecting the same. Provided, however, that any state department, court, school, school district, or other state agency, or federal agency, shall not be required to make bond for the issuance of duplicate warrants. The head of such state agency or federal agency and one other person connected with the handling of warrants for such agency shall be required to make the affidavit for duplicate to issue in case of lost or destroyed warrant belonging to such agency. In the case of a stolen warrant or a warrant on which the payee's endorsement has been forged, if the Comptroller is satisfied that the warrant is in the possession of the appropriate law enforcement officials, and if the applicant is the same person as the payee, the Comptroller may issue the duplicate warrant without requiring a bond. Any entity, other than a law enforcement official, that has possession of a stolen warrant or a warrant on which the payee's endorsement has been forged shall immediately deliver the warrant to the issuing agency or the Comptroller upon request. The agency or Comptroller shall then issue a receipt for the warrant. After the issuance of said duplicate or copy if the Comptroller should ascertain that the same was improperly issued, or that the applicant or party to whom the same was issued was not the owner thereof, he shall at once demand the return of said duplicate or copy if unpaid, or the amount paid out by the State, if so paid; and, upon failure of the party to return same or the amount of money called for, suit shall be instituted upon said bond in Travis County. The Comptroller shall adopt rules, regulations, and forms regarding the issuance of duplicate warrants.

[Amended by Acts 1977, 65th Leg., p. 265, ch. 126, § 1, eff. Aug. 29, 1977.]

Art. 4366b. Federal Revenue Sharing Trust Fund

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

Sec. 3. In order to insure that the State of Texas obtains the full benefit of the Federal Revenue Sharing Trust Fund, the Comptroller of Public Accounts of the State of Texas is hereby authorized to invest any cash held in such fund, which is determined to be in excess of cash requirements for current expenditures, in United States Government securities, in direct obligations of or obligations the principal and interest of which are guaranteed by the United States of America, in direct obligations of or participation certificates guaranteed by the Federal Intermediate Credit Bank, Federal Land Banks, Federal National Mortgage Association, Federal Home Loan Banks, and Banks for Cooperatives, in savings and loans insured by the Federal Savings and Loan Insurance Corporation, in certificates of deposit of any bank or trust company the deposits of which are fully secured by a pledge of securities of any of the kind hereinabove specified, in any other securities made eligible for such investment by other laws and constitutional provisions, or in any combination of the foregoing.

[Amended by Acts 1977, 65th Leg., p. 1717, ch. 684, § 1, eff. Aug. 29, 1977.]

CHAPTER THREE. STATE TREASURER

Article

4386c-1. Disposition of Money Collected or Received by the Department of Agriculture [NEW].

Art. 4375. Employés

The Treasurer shall appoint a Chief Clerk who shall be required to give bond with a good and solvent surety company authorized to do business in this State, in the sum of twenty-thousand dollars, payable to and to be approved by the Governor, and conditioned as is the bond of the State Treasurer, and shall appoint such other employés and clerks as may be authorized by law. All such employés, whether clerks or otherwise, who, as a part of their duties, handle any money, drafts, checks, bills of exchange, warrants, or securities or other evidences of debt which are, or may be, convertible into money, shall give bond with a good and solvent surety company authorized to do business in this State, payable to the Treasurer in such sum as he may require, conditioned that he or she will faithfully execute and perform the duties of his or her position. The Treasurer shall employ security officers to provide needed security services at the Treasury Department and may commission the officers as peace officers. The security officers shall give bond in the same manner required by this Article of employés who handle money as part of their duties.

The cost and expense incident to the execution of the bond of the chief clerk and of the bonds of the respective employes shall be paid by the State by appropriation.

[Amended by Acts 1977, 65th Leg., p. 618, ch. 227, § 1, eff. May 24, 1977.]

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.

Art. 4386c-1. Disposition of Money Collected or Received by the Department of Agriculture

Sec. 1. Regardless of any other law previously enacted, all money collected or received by the Texas Department of Agriculture shall be deposited in the state treasury to the credit of the General Revenue Fund.

Sec. 2. The unexpended and unencumbered balance of the Special Department of Agriculture Fund on September 1, 1977, is transferred to the General Revenue Fund.

Sec. 3. This Act takes effect September 1, 1977. [Acts 1977, 65th Leg., p. 687, ch. 259, §§ 1 to 3, eff. Sept. 1, 1977.]

CHAPTER FOUR. ATTORNEY GENERAL

Article

4412b. Defense of District Judges [NEW].

Art. 4399. Whom to Advise

The Attorney General at the request of the Governor, or the head of any department of the State government, including the heads and boards of penal and eleemosynary institutions, and all other State boards, regents, trustees of the State educational institutions, committees of either branch of the Legislature, county auditors authorized by law, and the chairman of the governing board of any river authority, shall give them written advice upon any question touching the public interest, or concerning their official duties. He shall advise the several district and county attorneys of the State, in the prosecution and defense of all actions in the district or inferior courts, wherein the State is interested, whenever requested by them, after said attorney shall have investigated the question, and shall with such question, also submit his brief. He shall advise the proper legal authorities in regard to the issuance of all bonds that the law requires shall be approved by him. He is hereby prohibited from giving legal advice or written opinions to any other than the officers or persons named herein.

[Amended by Acts 1977, 65th Leg., p. 1302, ch. 512, § 1, eff. Aug. 29, 1977.]

Art. 4405. Repealed by Acts 1975, 64th Leg., p. 568, ch. 226, § 1, eff. May 20, 1975

Art. 4412b. Defense of District Judge, Grand Juror or Commissioner

(a) 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.

(b) The attorney general is responsible for defending a state grand jury commissioner or a state grand juror in an action or suit in the federal courts in which the commissioner or the juror is a defendant if:

(1) the suit involves an act of the defendant while in the performance of his duties as a grand jury commissioner or a grand juror; and

(2) the commissioner or the juror 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. Amended by Acts 1977, 65th Leg., p. 186, ch. 92, § 1, eff. Aug. 29, 1977.]

CHAPTER FOUR-A. STATE AUDITOR

Article

4413a-8a. Application of Sunset Act [NEW].

Art. 4413a-7b. Repealed by Acts 1975, 64th Leg., p. 591, ch. 242, § 7, eff. May 20, 1975

See, now, art. 41b.

Art. 4413a-8a. Application of Sunset Act

The Legislative Audit Committee is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the committee is abolished effective September 1, 1989.

[Added by Acts 1977, 65th Leg., p. 1854, ch. 735, § 2.161, eff. Aug. 29, 1977.]

¹ Article 5429k.

CHAPTER FOUR-B. INTERSTATE COOPERATION

Article

4413b. Regulation of Style and Format of Agency Periodic Reports to Governor or Legislature [NEW].

Art. 4413b. Regulation of Style and Format of Agency Periodic Reports to Governor or Legislature

Sec. 1. In this Act, "agency" means a department, board, commission, office, or other entity in the executive, legislative, or judicial branch of state government, and includes a public university, senior college, or junior college.

Sec. 2. The state auditor shall promulgate and distribute rules prescribing the style and format of

all periodic reports that agencies are required by law to make to the governor, the legislature, or any officer, committee, or agency of the legislature. The rules shall include restrictions on the quality or price of paper used, style or method of printing or typesetting, binding, illustrations, photographs, and other matters relevant to the cost of producing the reports, with the objective of minimizing the cost of the reports without impairing the ability of agencies to make effective reports.

Sec. 3. In making periodic reports referred to in Section 2 of this Act, each agency shall comply with the rules promulgated by the state auditor, and the comptroller shall refuse to issue a warrant to pay any expense incurred by an agency in violation of the rules.

[Acts 1977, 65th Leg., p. 138, ch. 67, §§ 1 to 3, eff. April 18, 1977.]

Art. 4413b-1. Commission Established; Composition; Functions; Governor's Committee

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

Application of Sunset Act

Sec. 2a. The Texas Commission on Interstate Cooperation is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1983.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 3 to 10]

[Amended by Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.077, eff. Aug. 29, 1977.]

CHAPTER FOUR-C. SOUTHERN INTERSTATE NUCLEAR COMPACT

Art. 4413c-1. Southern Interstate Nuclear Compact

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

Application of Sunset Act

Sec. 2a. The office of Southern Interstate Nuclear Compact Board Member for Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1983.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 3 to 6]

[Amended by Acts 1977, 65th Leg., p. 1841, ch. 735, § 2.064, eff. Aug. 29, 1977.]

CHAPTER FOUR-D. STATE-FEDERAL RELATIONS

Art. 4413d-1. Division of State-Federal Relations

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

Application of Sunset Act

Sec. 1a. The office of State-Federal Relations is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1983.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 2 to 7]

[Amended by Acts 1977, 65th Leg., p. 1842, ch. 735, § 2.076, eff. Aug. 29, 1977.]

CHAPTER FOUR-E. ENERGY AND WATER RESOURCE CONSERVATION [NEW]

Art. 4413e-1. Interstate Compact for the Conservation and Utilization of Natural Energy and Water Resources

Sec. 1. The Interstate Compact for the Conservation and Utilization of Natural Energy and Water Resources reads as follows:

ARTICLE I

The states of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas are eligible to ratify this compact. When three of those states have ratified it, the compact takes effect as to those three states. It takes effect as to others of them when they ratify it.

ARTICLE II

(a) The purposes of this compact are to:

(1) provide for the conservation and wise utilization of natural energy and water resources by party states;

(2) establish the relative importance of different types of natural energy and water resources being used;

(3) promote comity among the party states and remove causes of present and future controversies;

(4) foster the expeditious development of agriculture and industry in the party states; and

(5) give priority to the exchange of natural energy and water resources among the party states.

(b) To accomplish the purposes of this compact, the party states pledge their mutual cooperation and their intention to develop and execute appropriate programs.

ARTICLE III

(a) This compact applies within each party state to individuals, associations, corporations, and governmental and private entities claiming any right to the use of the natural energy or water resources in a party state, except as otherwise provided in this compact.

(b) Each party state agrees that within a reasonable time it may enact laws designed to promote a free flow of natural energy and water resources among all party states. These laws will not apply to states that are not parties to this compact.

ARTICLE IV

(a) An administrative agency known as the Interstate Natural Energy and Water Resources Commission is created. Each party state shall appoint, in accordance with its laws, three members of the commission. Members of the commission are known as commissioners.

(b) The commission shall conduct studies and make recommendations to the party states regarding the conservation and wise utilization of natural energy and water resources by those states. It shall recommend to the party states methods of coordinating the exercise of state power to promote maximum conservation and utilization of natural energy and water resources.

(c) The commission may meet as often as it considers necessary, but it must meet at least once each year. At least once each year the commission shall report its findings and recommendations to the governor and legislature of each party state.

(d) The commission shall organize and adopt rules and bylaws for conducting its business. It shall adopt a seal. The commission may not act on any matter except by an affirmative vote of a majority of all commissioners serving on the commission.

(e) The commission shall elect annually from among its members a chairman, vice-chairman, and treasurer. It shall appoint a director who serves at its pleasure. The director is also secretary of the commission. The director and treasurer shall be bonded in an amount and in a manner determined by the commission. The director is responsible for the appointment and discharge of personnel. He shall establish personnel policies, retirement programs, and employee benefit programs, subject to the approval of the commission.

(f) The commission shall establish and maintain such facilities as it considers necessary for transacting its business.

(g) For the purposes of this compact, the commission may accept and use gifts or grants of money, equipment, or supplies from any public or private legal entity and may accept and use the services of personnel made available to it by any public or private legal entity.

ARTICLE V

(a) Nothing in this compact shall be construed as:

(1) Affecting the jurisdiction of any interstate agency in which a party state participates;

(2) affecting the provisions of any interstate compact to which a member state is a party, or any obligation of a member state under such a compact;

(3) discouraging additional interstate compacts in which one or more parties to this compact may be a party;

(4) discouraging the coordination of activities regarding a specific natural resource or any aspect of natural resource management;

(5) discouraging the establishment of intergovernmental planning agencies within the area of the states that are party to this compact; or

(6) limiting the jurisdiction or activities of any participating government or any agency or officer of a participating government except as expressly provided in this compact.

ARTICLE VI

The commission shall submit to the governor and legislature of each party state a budget of its estimated expenditures for a period of time as is appropriate, based on the laws of that state. Each budget of estimated expenditures shall contain specific recommendations as to the apportionment of costs among the party states.

ARTICLE VII

Any party state may, by legislative act and one year's notice, withdraw from this compact.

ARTICLE VIII

The provisions of this compact are severable. If any provision or application of it is held invalid, that does not affect the validity of any other provision or application. The provisions of this compact shall be construed liberally to accomplish its purposes.

ARTICLE IX

This compact does not seek to affect political balance within the federal system and shall not be construed as requiring the consent of congress under Article I, Section 10, United States Constitution.

Sec. 2. The compact set out in Section 1 of this Act is ratified by this state.

Sec. 3. (a) When the compact takes effect as provided in Article I, the governor, lieutenant governor, and speaker of the house of representatives shall each appoint a commissioner.

(b) Each commissioner serves a term of two years and until his successor is appointed and has quali-

fied. Each commissioner shall take the constitutional oath of office and shall also take an oath to faithfully perform his duties as commissioner. If a vacancy occurs in the office of commissioner, the original appointing officer shall appoint a successor to serve for the unexpired portion of the term.

(c) Each commissioner is entitled to compensation and reimbursement for expenses as provided by legislative appropriation.

[Acts 1977, 65th Leg., p. 322, ch. 155, §§ 1 to 3, eff. May 13, 1977.]

CHAPTER FIVE. DEPARTMENT OF PUBLIC SAFETY

Article

4413(1a). Application of Sunset Act [NEW].

4413(17a). Supplemental Pay for Certain Commissioned Officers [NEW].

Art. 4413(1a). Application of Sunset Act

The Department of Public Safety is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the department is abolished effective September 1, 1987.

[Added by Acts 1977, 65th Leg., p. 1850, ch. 735, § 2.129, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 4413(17a). Supplemental Pay for Certain Commissioned Officers

If a commissioned officer of the Department of Public Safety who holds a classified position is required to be on duty more than 40 hours during any one or more calendar weeks which end during a calendar month, or is required to appear in court at any time during a calendar month, he shall receive for that month, in addition to his regular monthly salary as provided by legislative appropriation, a supplement not to exceed 10 percent of his regular salary.

[Added by Acts 1977, 65th Leg., p. 1377, ch. 548, § 1, eff. Aug. 29, 1977.]

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 given 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]

Application of Sunset Act

Sec. 1a. The Commission on Law Enforcement Officer Standards and Education is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1987.

¹ Article 5429k.

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)]

(b) No person after September 1, 1970, shall be appointed as a peace officer, except on a temporary or probationary basis, unless such person has satisfactorily completed a preparatory program of training in law enforcement at a school approved or operated by the Commission. Any peace officer who has received a temporary or probationary appointment as such on September 1, 1970, or thereafter, and who fails to enroll at the next regularly scheduled class for the training required for certification, and fails to satisfactorily complete a basic course in law enforcement, as prescribed by the Commission, within a six-month period from the date of his original appointment, shall forfeit his position as a peace officer and shall be removed therefrom; and may not have his temporary or probationary employment extended by renewal of appointment or otherwise; except that after the lapse of one year from the date of his forfeiture and removal, a local law enforcement agency may petition the Commission for reinstatement of temporary or probationary employment of such individual, such reinstatement resting within the sole discretion of the Commission.

[See Compact Edition, Volume 4 for text of 6(c) 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]

Law Enforcement Officer Standards and Education Fund

Sec. 9B. (a) There is hereby created and established in the State Treasury a special fund to be known as the Law Enforcement Officer Standards and Education Fund to be used by the Commission in administering this Act and performing other duties imposed on the Commission by law.

(b) The sum of One Dollar (\$1.00) shall be paid as costs of court, in addition to other taxable court costs, by any person convicted of any criminal offense. Convictions arising under the traffic laws of this state are specifically included as follows:

(1) any offense defined in Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes); and

(2) any offense defined in the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), except Sections 34, 76, 77, 78, 79, 80, 81, 93, 94, 95, 96, and 97 of that Act.

(c) Court costs due under this section shall be collected in the same manner as other fines or costs are collected in the case.

(d) The officer collecting the costs in a municipal court case shall keep separate records of the funds collected as costs under this section, and shall deposit the funds in the municipal treasury. The officer collecting the costs in a justice, county, and district court case shall keep separate records of the funds collected as costs under this section, and shall deposit the funds in the county treasury.

(e) All officers collecting court costs under this section shall file the reports required by Articles 1001 and 1002, Code of Criminal Procedure, 1925.

(f) The custodians of the municipal and county treasuries shall keep records of the amount of funds on deposit collected under this section, and shall on the tenth day of December, March, June and Sep-

tember of each year remit to the Comptroller of Public Accounts the funds collected under this section during the preceding quarter. Each city and county collecting funds under this section is hereby authorized to retain five percent (5%) of the funds collected by them as a service fee for said collection.

(g) The Comptroller of Public Accounts shall deposit the funds received by him under this section in the Law Enforcement Officer Standards and Education Fund.

(h) The Comptroller of Public Accounts shall, on requisition of the Commission, draw warrants from time to time on the State Treasury for the amount specified in the requisition, not exceeding, however, the amount in the fund at the time of making a requisition. All money expended by the Commission in the administration of this Act and in performing the duties otherwise imposed upon it by law, shall be specified and determined by itemized appropriation in the general appropriations bill for the Commission on Law Enforcement Officer Standards and Education, and not otherwise. At the end of each state fiscal year, any unused portion of the money in this special fund, except those funds theretofore appropriated to the Commission to administer this Act and to perform the duties otherwise imposed on it by law for the next fiscal year, shall be paid into the state General Revenue Fund.

(i) This Act takes effect September 1, 1977.

[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; Acts 1977, 65th Leg., p. 246, ch. 114, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 876, ch. 328, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1851, ch. 735, § 2.136, eff. Aug. 29, 1977.]

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 sells, 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 operate 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 and identified to the public as a place from which business is conducted, solicited, or advertised.

(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.

(25) "Alarm systems response runner" means a person who responds to the first signal of entry.

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;
- (d) not a reserve 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) a person who engages exclusively in the business of repossessing property that is secured by a mortgage or other security interest;

(8) a locksmith who does not install or service detection devices, does not conduct investigations, and is not a security service contractor;

(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, installs it for the protection of his personal property located on another's property, and does not install the devices as a normal business practice 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) the provisions of this Act shall not apply to common carriers by rail engaged in interstate commerce and regulated by state and federal authorities and transporting commodities essential to the national defense and to the general welfare and safety of the community;

(12) registered professional engineers practicing in accordance with the provisions of the Texas Engineering Practice Act.¹

(13) a person whose sale of alarm signal devices, burglary alarms, television cameras, still cameras, or other electrical, mechanical, or electronic devices used for preventing or detecting burglary, theft, shoplifting, pilferage, fire, smoke, or other losses is exclusively over-the-counter or by mail order.

(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.

(d) The Texas Board of Private Investigators and Private Security Agencies is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

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 members 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 representa-

tives, 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.

Subpoenas and Injunctions

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.

(d) Investigators employed by the board are authorized to take statements under oath in any investigation of a matter covered by this Act.

(e) The board may sue in district court to enjoin a violation of this Act. The attorney general shall represent the board in injunction actions.

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 an investigations company, guard company, alarm systems company, armored car company, courier company, or guard dog company 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 or represent falsely that he is licensed, registered, or commissioned.

(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, guard company, alarm systems company, armored car company, courier company, or guard dog company unless the individual intends to maintain and maintains that supervisory position on a daily basis for the company.

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 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 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 each security services field for which he applies, 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 have been obtained legally and 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) one classifiable set 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 in the particular field of classification in which he is applying;
- (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 in his field of classification 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.

(d) A Class A, B, or C license does not authorize the licensee to perform any services for which he has not qualified. The board shall indicate on the license which services the licensee is authorized to perform, and the licensee may not perform any service not indicated on the license.

Fees

Sec. 17. (a) The fee for making application for an original Class A or Class B license is \$150, and \$75 of the fee is not refundable.

(b) The fee for making application for an original Class C license is \$225, and \$75 of the fee is not refundable.

(c) The fee for renewing an original license is the same as the original license fee.

(d) The fee to reinstate a suspended license is \$100.

(e) The fee for an original branch office license as defined in Subdivision (20), Section 2 of this Act is \$100. The renewal fee for a branch office license is \$100.

(f) The fee for changing the business name of a licensee is \$50.

(g) The delinquency fee for not renewing a license in the month prior to its expiration date is \$100.

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.

(e) If a manager lacks the experience to qualify to manage all categories of service included in a license or application, a supervisor qualified as required in Subsection (b) of this section must be responsible for each service for which the manager is unqualified.

Handgun; Security Officer Commission

Sec. 19. (a) It is unlawful and punishable as provided in Section 44 of this Act:

(1) 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; or

(2) 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 \$15 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 is-

suance 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 is \$10.

(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 ap-

prove 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 25 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 qualifications 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 unless the assignment is approved in advance by the board. The fee for assignment of a license is \$100.

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 may be legally responsible for the conduct in the business of each employee while the employee is performing his assigned duties for the licensee.

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 \$100; the fee for a renewal for such license shall be \$100.

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, supervisors, and branch office managers required by this Act is \$15. The annual renewal registration fee for private investigators, managers, and branch office managers required by this Act is \$15.

Bonds and Insurance Filed for Licensee

Sec. 40. (a) 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 hereun-

der, every 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.

(b) No license shall be issued under this Act unless the applicant files with the board proof of a policy of public liability insurance in the form of a certificate of insurance executed by an insurer authorized to do business in this state and countersigned by a local recording agent licensed in this state. The policy of public liability insurance shall be conditioned to pay on behalf of the licensee all sums which the licensee becomes legally obligated to pay as damages because of bodily injury, limit of liability Fifty Thousand Dollars (\$50,000), property damage, limit of liability Twenty-five Thousand Dollars (\$25,000), and personal injury, limit of liability Fifty Thousand Dollars (\$50,000), caused by an occurrence involving the principal, its servants, officers, agents, or employees in the conduct of any business licensed under 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 or Insurance

Sec. 42. (a) Every licensee shall at all times maintain on file with the board the surety bond and certificate of insurance 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, insurance certificate, or both.

(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 or insurance certificate 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.

(d) Insurance certificates executed and filed with the board pursuant to this Act shall remain in force and effect until the insurer has terminated future liability by a 10-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

Sec. 45. (a) A license issued under this Act expires at 12 midnight on the last day of the 11th month after the month in which it is issued.

(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) The renewal period for a license is the month preceding the month in which it expires.

Expiration Dates of Licenses; Proration of Fees

Sec. 46. The board by rule may adopt a system under which the expiration date of a license may be changed at renewal time so that a licensee may pay only that portion of the license renewal 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 renewal 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 may not be reinstated.

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 registered 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 one year 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; Acts 1977, 65th Leg., p. 1836, ch. 735, § 2.032, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1871, ch. 746, §§ 1 to 25, eff. Aug. 29, 1977.]

Section 27 of Acts 1977, 65th Leg., ch. 746 provided:

"A person licensed on the effective date of this Act may continue to offer the services he is currently offering without reapplication or additional qualifications."

Art. 4413(29cc). Polygraph Examiners Act

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

Creation of the Board

Sec. 5.

[See Compact Edition, Volume 4 for text of 5(a) to (d)]

(e) The Polygraph Examiners Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 6 to 30]

[Amended by Acts 1977, 65th Leg., p. 1836, ch. 735, § 2.031, eff. Aug. 29, 1977.]

CHAPTER SEVEN. INTERGOVERNMENTAL COOPERATION

Article

4413(32e). Joint Advisory Committee on Government Operations [NEW].

4413(32f). Closeup Act [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]

Application of Sunset Act

Sec. 4a. The Texas Advisory Commission on Intergovernmental Relations is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1983.

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; Acts 1977, 65th Leg., p. 1842, ch. 735, § 2.075, eff. Aug. 29, 1977.]

¹ Article 5429k.

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 create 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) and (g)]

(h)(1) By resolution of the governing body, a political subdivision of the state may contract with other political subdivisions of the state to participate in the ownership, construction, and operation of a regional jail facility. The regional jail shall be located within the geographic boundaries of one of the participating political subdivisions, but the regional jail need not be located in a county seat.

(2) Prior to acquisition and construction of the regional jail facility, bonds to finance the acquisition and construction of the facility shall be issued by the participating subdivisions in the manner prescribed by law for issuance of permanent improvement bonds.

(3) The participating political subdivisions may establish by agreement that the police chief or sheriff of the political subdivision in which the regional jail is located shall be appointed as jailer of the facility and shall have authority to supervise the operation and maintenance of the jail, that a committee composed of the sheriff or police chief of each participating political subdivision may be established to appoint a jailer to supervise the maintenance and operation of the jail, or that each police chief or sheriff may continue the supervision and responsibility over the prisoners he has incarcerated in the regional jail facility. The participating political subdivisions may also employ or authorize the jailer to employ additional personnel necessary to operate and maintain the facility.

(4) When an agreement is established pursuant to Subdivision (3) of this subsection, prisoners incarcerated in the regional jail shall be under the supervision of the person designated to have responsibility

for the supervision of the regional jail. If a prisoner is transferred back to the originating political subdivision from a regional jail, the appropriate law enforcement official in the originating political subdivision shall assume supervision and responsibility for the prisoner.

(5) While a prisoner is incarcerated in a regional jail facility, a sheriff or police chief not assigned to supervise the regional jail is not liable for the escape of the prisoner or for any injury or damage caused by or to the prisoner unless the escape, injury, or damage is directly caused by the sheriff or police chief.

(6) A jailer in charge of a regional jail and any assistant jailers he may employ must be commissioned peace officers.

[See Compact Edition, Volume 4 for text of 5 to 8]

[Amended by Acts 1975, 64th Leg., p. 1235, ch. 460, §§ 1 to 3, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1619, ch. 634, § 2, eff. Aug. 29, 1977.]

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 session 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.]

Art. 4413(32f). Closeup Act

Short Title

Sec. 1. This Act may be cited as the Texas Closeup Act.

Definitions

Sec. 2. In this Act:

- (1) "Board" means the Texas Closeup Board;
- (2) "Program" means the Texas Closeup Program.

Creation of Program

Sec. 3. The Texas Closeup Program is created. Under this program, 11th and 12th grade students and supervising teachers from participating school districts and private institutions may be brought to Austin in order to observe and evaluate state government.

Texas Closeup Board

Sec. 4. (a) Control of the program is vested in the Texas Closeup Board, which is composed of nine members appointed by the governor with the advice and consent of the senate. The term of office of members is six years, and the terms shall be staggered at two-year intervals. In making the initial appointments, the governor shall designate three members for terms expiring on January 31 of each of the succeeding three consecutive odd-numbered years.

(b) Vacancies in the offices of members must be filled by appointment by the governor for the unexpired term.

(c) The board shall elect from among its members a chairman to serve for a term of one year.

(d) The board shall have its office in Austin.

(e) Members of the board serve without compensation but shall be reimbursed for actual and necessary expenses incurred in carrying out official duties.

(f) Five members constitute a quorum for the transaction of business.

(g) The Texas Closeup Board shall expire on December 31, 1981, unless its existence is extended prior to that date by legislative action.

Duties of Board

Sec. 5. The board shall in conjunction with the board and executive officers of the Closeup Foundation:

(1) develop the tours, seminars, and other activities of the program;

(2) promulgate rules necessary for the administration of the program, including rules governing the eligibility requirements for participating students and the compensation to be provided supervising teachers;

(3) coordinate the program with the National Closeup Foundation;

(4) prepare and submit annually to the governor and legislature an operating budget; and

(5) solicit gifts, grants, and endowments from public and private sources.

Executive Director

Sec. 6. (a) The board shall employ an executive director who has experience as a public high school administrator and may delegate to him authority to

manage and operate the affairs of the program subject to orders of the board.

(b) The director shall:

(1) serve as liaison with the board and executive officers of the Closeup Foundation;

(2) hire adequate staff to carry out the program;

(3) coordinate the program with administrators of participating school districts and private institutions;

(4) develop for board approval a plan to divide the state into regions and select regional coordinators for implementation of the program; and

(5) carry out the orders of the board in the administration and development of the program.

Texas Closeup Advisory Council

Sec. 7. (a) There is created the Texas Closeup Advisory Council, to be composed of the following members:

- (1) the governor;
- (2) the lieutenant governor;
- (3) the secretary of state;
- (4) the comptroller of public accounts;
- (5) the treasurer;
- (6) the commissioner of the General Land Office;
- (7) the attorney general;
- (8) the chairman of the Railroad Commission of Texas;
- (9) the chief justice of the Supreme Court;
- (10) the presiding judge of the Court of Criminal Appeals;
- (11) the speaker of the house;
- (12) two members of the senate, appointed biennially for two-year terms by the lieutenant governor;
- (13) five members of the house of representatives, appointed biennially for two-year terms by the speaker of the house;
- (14) the commissioner of education; and
- (15) one representative from each teacher, school administrator, school board, or other professional organization involved in high school education, as determined by the board, appointed by the board for a term of two years.

(b) The governor or his designee from among the other members shall serve as chairman of the advisory council.

(c) The advisory council shall meet at least once a year and at other times it considers necessary.

(d) The advisory council shall advise and assist the board in the development and implementation of the program and shall recommend changes in the program considered necessary in order to improve its services and functions.

Grants and Gifts; No State Funds

Sec. 8. The board may accept and administer, without appropriation, grants and gifts from the federal government and from any foundation, trust fund, corporation, individual, or organization for the use and benefit of the program. No state funds may be specifically appropriated to support the program.

Contract for Services

Sec. 9. The board may contract with individuals, federal, state, and local government agencies, and corporations or associations to provide services necessary to the administration of the program.

[Acts 1977, 65th Leg., p. 2035, ch. 814, §§ 1 to 9, eff. June 16, 1977.]

CHAPTER NINE. COMMISSIONS AND AGENCIES

Article

4413(42a). Joint Advisory Committee on Educational Services to the Deaf [NEW].

4413(47). Expired.

4413(47a). Energy Policy Planning Act of 1977 [NEW].

4413(47b). Energy Development Act of 1977 [NEW].

4413(48). Natural Resources Council Act of 1977 [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(35). Commission on Fire Protection Personnel Standards and Education

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

Application of Sunset Act

Sec. 1a. The Commission on Fire Protection Personnel Standards and Education is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1987.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 2 to 5]

Personnel Qualifications and Standards; Rules; Certificate; Penalty

Sec. 6.

[See Compact Edition, Volume 4 for text of 6(a) to (g)]

(h) The commission shall formulate and publish the requirements for certification as a marine fire-

man by September 1, 1978. After September 1, 1978, no person may be appointed as a marine fireman except on a probationary basis unless the person has completed training prescribed by the commission. A marine fireman who is appointed on a probationary basis after September 1, 1978, must complete the prescribed training within a two-year period from the date of appointment. Marine firemen serving under permanent appointment and with five or more years of service on September 1, 1978, have satisfied the training requirements by their experience. A marine fireman serving under permanent appointment and with less than five years of experience on September 1, 1978, must complete the prescribed training by September 1, 1980. For the purposes of this Act, a marine fireman is one who works for a fire department and aboard fireboats and fights fires which occur on or adjacent to a waterway, waterfront, channel, or turning basin.

(i) A person who accepts appointment as a marine fireman or a person who appoints a marine fireman in violation of Subsection (h) of this section shall be guilty of a misdemeanor and on conviction shall be fined not less than \$100 nor more than \$1,000.

[See Compact Edition, Volume 4 for text of 7 to 10]

[Amended by Acts 1977, 65th Leg., p. 755, ch. 283, § 1, eff. May 27, 1977; Acts 1977, 65th Leg., p. 1851, ch. 735, § 2.138, eff. Aug. 29, 1977.]

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 (7)]

(8) "Franchise" means one or more contracts under which (A) the franchisee is granted the right to sell new motor vehicles manufactured or distributed by the franchisor; (B) the franchisee as an independent business is a component of franchisor's distribution system; (C) the franchisee is substantially associated with franchisor's trademark, tradename and commercial symbol; (D) the franchisee's business is substantially reliant on franchisor for a continued supply of motor vehicles, parts, and accessories for the conduct of its business; or (E) any right,

duty, or obligation granted or imposed by this Act is affected.

[See Compact Edition, Volume 4 for text of 1.03(9)]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

[See Compact Edition, Volume 4 for text of 2.01]

Application of Sunset Act

Sec. 2.01a. The Texas Motor Vehicle Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1979.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 2.02 to 3.05]

SUBCHAPTER D. LICENSES

[See Compact Edition, Volume 4 for text of 4.01, 4.01A]

Dealer Application

Sec. 4.02.

[See Compact Edition, Volume 4 for text of 4.02(a) to (c)]

(d) A dealer licensed hereunder shall promptly notify the Commission of a change in ownership, location or franchise of a dealer, or any other matters the Commission may require by rule. Prior to a change in location of a dealership, a new license must be applied for as in any original application.

Manufacturer, Distributor and Representative Application

Sec. 4.03.

[See Compact Edition, Volume 4 for text of 4.03(a) and (b)]

(c) Each application for a manufacturer's license shall include an instrument setting forth the terms and conditions of all warranty agreements in force and effect on the products it sells in this State to ascertain the degree of protection afforded the retail purchasers of those products and the obligations of dealers in connection therewith as well as the basis for compensating dealers for labor, parts and other expenses incurred in connection with such manufacturer's warranty agreements including a statement of the manufacturer's compliance with Subdivision (9), Section 5.02 of this Act. In addition, all manufacturers shall specify on or with the application the delivery and preparation obligations of their dealers prior to delivery of a new motor vehicle to a retail purchaser and the schedule of compensation to be paid to dealers for the work and service performed by them in connection with such delivery.

[See Compact Edition, Volume 4 for text of 4.03(d) to 4.05(b)]

Denial, Revocation or Suspension of License

Sec. 4.06.

[See Compact Edition, Volume 4 for text of 4.06(a) and (b)]

(c) The Commission may deny a dealer application to establish a dealership if the same line-make of new motor vehicle is then represented in the county in which the proposed dealership site is located, or in an area within 25 miles of the proposed dealership site, by a dealer who is in compliance with his franchise agreement with the manufacturer or distributor, is adequately representing the manufacturer or distributor in the sale and service of its new motor vehicles, and no good cause is shown for an additional dealer license in the public interest.

[See Compact Edition, Volume 4 for text of 4.06(d) and (e)]

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 securing 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 an amount of money for warranty work that is less than that charged by the dealer to the retail customers of the dealer for nonwarranty work of like kind. 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; Acts 1977, 65th Leg., p. 947, ch. 357, §§ 1 to 5, eff. June 10, 1977; Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.010, eff. Aug. 29, 1977.]

Art. 4413(38). Coastal and Marine Council

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

Application of Sunset Act

Sec. 1a. The Texas Coastal and Marine Council is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the

council is abolished, and this Act expires effective September 1, 1985.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 2 to 5]

[Amended by Acts 1977, 65th Leg., p. 1844, ch. 735, § 2.085, eff. Aug. 29, 1977.]

Art. 4413(40). Civil Air Patrol Commission

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

Application of Sunset Act

Sec. 1a. The Commission for the Texas Civil Air Patrol is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

Powers

Sec. 2. The commission may:

(1) advise the Governor's Division of Disaster Emergency Services as to (i) the deployment of voluntarily offered aviation resources in search and rescue operations and (ii) disaster-related planning, training, and operations under the Texas Disaster Act of 1975 (Article 6889-7, Vernon's Texas Civil Statutes); and

(2) provide assistance to private aviators, including partial reimbursement for funds expended, in meeting the actual costs of aircraft operation requested by the governor or his designee.

Clerical and Administrative Services

Sec. 2a. The Governor's Division of Disaster Emergency Services shall provide clerical and other administrative services to the commission.

[See Compact Edition, Volume 4 for text of 3 to 5]

Duties

Sec. 6. In carrying out the duties and responsibilities of the commission it shall have the following duties:

(a) to meet at such times and places in the State of Texas as it deems proper; meeting shall be called by the chairman upon his own motion, or upon the written request of five members;

(b) to contract with other agencies, public or private, or persons, as it deems necessary for the rendition and affording of such services, facilities, studies, and reports as it may require to exercise the powers granted in Section 2 of this Act as amended. [Amended by Acts 1977, 65th Leg., p. 814, ch. 304, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1839, ch. 735, § 2.053, eff. Aug. 29, 1977.]

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]

Application of Sunset Act

Sec. 1B. The Texas Amusement Machine Commission is subject to the Texas Sunset Act;² and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1981.

[See Compact Edition, Volume 4 for text of 2 and 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 reim-

bursed 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; Acts 1977, 65th Leg., p. 1837, ch. 735, § 2.036, eff. Aug. 29, 1977.]

¹ Taxation—General, Art. 13.01 et seq.

² Article 5429k.

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(42). Commission for the Deaf

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

Creation; Members; Appointment and Qualifications; Application of Sunset Act

Sec. 2.

[See Compact Edition, Volume 4 for text of 2(a) and (b)]

(c) The State Commission for the Deaf is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1985.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 3 to 8]

[Amended by Acts 1977, 65th Leg., p. 1847, ch. 735, § 2.108, eff. Aug. 29, 1977.]

Art. 4413(42a). Joint Advisory Committee on Educational Services to the Deaf

Purpose

Sec. 1. The purpose of this Act is to promote the economical delivery of the educational services to the deaf provided by state governmental educational institutions 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 Educational Services to the Deaf.

(2) "Departments and agencies" means all departments, bureaus, agencies, boards, commissions, and other instrumentalities of the executive branch of state government which provide any type of educational services to the deaf or that train professionals to work with the deaf.

(3) "Professionals" means persons trained as teachers, interpreters, and directors of teacher training programs, and ancillary personnel employed by educational institutions for the deaf.

Creation of Committee

Sec. 3. There is created the Joint Advisory Committee on Educational Services to the Deaf.

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 six persons, none of whom may be members of the house or of the senate, two of these members being deaf consumers, two members being parents of deaf consumers, and two members being professionals serving the deaf as defined by this Act.

(c) The lieutenant governor shall appoint one member of the senate.

(d) The speaker of the house of representatives shall appoint one member 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. Six 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 related to educational programs for the deaf;

(2) develop proposals for improving the structure and administration of state educational services to the deaf in order to assure the delivery of quality governmental services at the lowest possible cost;

(3) recommend suspension of government programs and services that duplicate and exceed in cost those same services offered by private business; and

(4) make findings and issue reports in the execution of the duties imposed by this section.

Powers

Sec. 10. The committee or any subcommittees of its membership designated by the chairman may:

(1) appoint and fix the compensation of necessary staff;

(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; and

(4) make findings and issue reports in the execution of the duties imposed by Section 9 of this Act.

Cooperation of Other Departments and Agencies

Sec. 11. (a) The Texas Legislative Council, the Legislative Budget Board, the Legislative Audit Committee, the Texas 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. 12. The committee may make an interim report on its progress, together with any specific recommendations it may deem desirable, to any session of the 65th Legislature, and shall make its final report to the 66th Legislature not later than 30 days after that legislature is organized. Unless extended by the 66th Legislature, the committee is dissolved on May 31, 1979.

[Acts 1977, 65th Leg., p. 1694, ch. 672, §§ 1 to 12, eff. Aug. 29, 1977.]

Art. 4413(43). Commission on Services to Children and Youth

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

Application of Sunset Act

Sec. 1a. The Texas Commission on Services to Children and Youth is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1985.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 2 to 10]

[Amended by Acts 1977, 65th Leg., p. 1847, ch. 735, § 2.110, eff. Aug. 29, 1977.]

Art. 4413(44). Governor's Commission on Physical Fitness

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

Creation; Appointment of Members; Term of Office; Vacancies; Application of Sunset Act

Sec. 3.

[See Compact Edition, Volume 4 for text of 3(a) and (b)]

(c) The Governor's Commission on Physical Fitness is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1989.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 4 to 9]

[Amended by Acts 1977, 65th Leg., p. 1854, ch. 735, § 2.159, eff. Aug. 29, 1977.]

Art. 4413(45). Film Commission

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

Application of Sunset Act

Sec. 2a. The Texas Film Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1989.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 3 to 5]

[Amended by Acts 1977, 65th Leg., p. 1855, ch. 735, § 2.166, eff. Aug. 29, 1977.]

Art. 4413(47). Expired

This article constituted the Energy Policy Planning Act of 1975, enacted by Acts 1975, 64th Leg., p. 971, ch. 370, which by § 8 thereof expired on September 1, 1977.

See, now, the Energy Policy Planning Act of 1977, art. 4413(47a).

Art. 4413(47a). Energy Policy Planning Act of 1977

Text of article effective until August 31, 1979

Short Title

Sec. 1. This Act may be cited as the Energy Policy Planning Act of 1977.

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 energy policy;

(2) for the state to articulate a state energy policy requires energy policy planning coordinated among 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 a state body responsible for this energy policy planning to provide an adequate degree of public visibility and awareness of energy matters.

Creation of the Texas Energy Advisory Council

Sec. 3. The Texas Energy Advisory Council is created. Voting members are the lieutenant governor, the speaker of the house of representatives, the attorney general, a designated commissioner of the Railroad Commission of Texas, a designated commissioner of the Public Utility Commission of Texas, the commissioner of the General Land Office, the agriculture commissioner, the state 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. The lieutenant governor is chairman, and the speaker of the house of representatives is vice-chairman. The Texas Energy Advisory Council shall meet at least every three months and at the call of the chairman.

Duties of the Council

Sec. 4. (a) The Texas Energy Advisory Council and the staff of the 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 the governor. The functions in this formulation process include:

(1) developing and maintaining an energy data base system and econometric modeling of the state;

(2) analyzing manpower needs for anticipated and desired changes 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 of importance to this state conducted inside and outside 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 to the legislature and the governor possible alternatives more consistent with state energy policy;

(6) recommending legislation and executive action to foster the development of increased energy supplies, more efficient energy systems, and increased conservation of energy; and

(7) maintaining contact with interested segments of the public for the purpose of accomplishing necessary public visibility and monitoring public concerns.

(b) The Texas Energy Advisory Council shall review and comment to the legislature and the governor on existing and proposed action by the federal government.

(c) The Texas Energy Advisory Council shall perform other duties imposed by law or assigned by the governor, the chairman, or the vice-chairman.

Staff of the Council

Sec. 5. (a) The governor, with the approval of the lieutenant governor and the speaker of the house of representatives, shall appoint an executive director.

(b) The executive director shall hire and direct all other staff necessary 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.

(c) The executive director may dismiss members of the staff of the council. Also, members of the staff and the executive director of the council may be dismissed by concurrence of the chairman and vice-chairman.

(d) Total staff of the council, including the executive director, shall not exceed 20 persons.

(e) The compensation of the executive director shall be determined by the chairman and vice-chairman but in no event shall it exceed \$36,000. Compensation for staff members shall be determined according to the position classification plan for other state employees.

(f) The executive director, with the approval of the chairman and vice-chairman, may contract with consultants, partnerships, corporations, universities, state agencies, and other governmental bodies to provide services necessary to perform the duties of the council.

Advisory Committee

Sec. 6. The Advisory Committee to the Texas Energy Advisory Council is created. The Texas Energy Advisory Council may appoint members to the advisory committee. Heads of other state agencies who are not members of the Texas Energy Advisory Council and citizens of the state who, if appointed, would represent a balance of opinions and interests and a cross-section of socioeconomic and geographic sectoral bases are eligible for membership. Members of the advisory committee shall be reimbursed within statutory guidelines for actual expenses for travel for the business of the advisory committee. Each citizen member of the advisory committee is entitled to receive \$25 for each day he is engaged in the business of the advisory committee. The advisory committee shall elect a chairman and vice-chairman to serve as nonvoting members of the Texas 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 Texas 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. The provisions of this Act expire on August 31, 1979.
[Acts 1977, 65th Leg., p. 1990, ch. 795, §§ 1 to 8, eff. Aug. 29, 1977.]

Art. 4413(47b). Energy Development Act of 1977

Short Title

Sec. 1. This Act shall be known as "The Texas Energy Development Act of 1977."

Declaration of Policy

Sec. 2. The legislature finds and declares that:

(1) Texas, the largest producer and consumer of energy among the 50 states, currently relies on oil and gas to supply at least 98 percent of its energy needs. Texas and the United States

have less than 10 years' supply of oil and gas reserves based on current rates of production.

(2) Although an end to federal price controls on oil and gas would stimulate greater development of oil and gas supplies, the rapid depletion of these fossil fuels is inevitable.

(3) The nation and the state must develop known resources of more plentiful fuels and begin the shift to total reliance on alternate abundant energy resources.

(4) Development of alternative energy technologies is both an expensive and risky activity which often discourages adequate funding by private sources alone. Precedent exists for government involvement in research, development, and demonstration of new technologies.

(5) While the major responsibility for energy research, development, and demonstration lies with the federal government, federal programs will often overlook projects of regional or state significance in order to concentrate on national priorities. Federal programs often bypass competent local research facilities in preference to federal laboratories or contractors.

(6) Other states have been able to attract federally funded energy development projects with the use of matching funds or seed money. Texas is interested in competing with these other states to secure such projects.

(7) The most effective development of alternate technologies depends on the close cooperation and coordination among federal, state, and local governments and private participants. Such coordination can be enhanced through the planning, programming, and implementation of a state energy development fund.

(8) Funding of energy research and development under this Act should concentrate on technologies which offer the realistic promise of significant energy contributions within 25 years and which are of particular importance to Texas.

Definitions

Sec. 3. In this Act:

(1) "Fund" means the Energy Development Fund created by this Act.

(2) "Board" means the Energy Development Fund Board.

(3) "Person" means an individual, corporation, association, organization, business trust, or any other legal entity.

Creation of the Energy Development Fund

Sec. 4. The Energy Development Fund is created in the state treasury and is composed of funds provided by legislative appropriation, not to exceed

\$5 million, plus such additional funds as are received from other sources in accordance with Section 7 of this Act. The fund is created to support research in and development of solar, geothermal, lignite, biomass, wind, conservation, and other alternate abundant energy resource technologies. Expenses incurred in the administration of this Act shall be payable out of the fund at a level not to exceed 10 percent of the total appropriated.

Creation of the Energy Development Fund Board

Sec. 5. There is created an Energy Development Fund Board which shall consist of the members of the Texas Energy Advisory Council.

Administration of the Fund

Sec. 6. (a) The board shall administer the fund.

(b) The board shall promulgate a plan for the development of alternative energy technologies. Such a plan shall prescribe detailed regulations for: submission and solicitation of proposals, evaluation and selection of proposals by an impartial group of technical experts, the disbursement of contracted funds, project cost accounting, and project reporting requirements. Such a plan shall be published within 60 days of the effective date of this Act. Within 90 days thereafter, the board shall adopt the plan following public hearing and appropriate review.

(c) The board may contract with universities, non-profit institutions, and other persons that meet the criteria for funding adopted by the board.

Additional Sources of Funding

Sec. 7. The board may receive funds from private or public sources for the purposes of this Act.

Initial Appropriation

Sec. 8. There is hereby appropriated to the Energy Development Fund from the General Revenue Fund the sum of \$1,500,000.

Effective Date

Sec. 9. This Act shall take effect on September 1, 1977.

[Acts 1977, 65th Leg., p. 2091, ch. 838, §§ 1 to 9, eff. Sept. 1, 1977.]

Art. 4413(48). Natural Resources Council Act of 1977

Text of article effective until September 1, 1983

Creation of the Natural Resources Council; Short Title

Sec. 1. The Natural Resources Council, hereinafter referred to as the NRC, is hereby created, and this Act may be cited as the Natural Resources Council Act of 1977.

Policy

Sec. 2. It is the declared policy of the state to:

(a) protect, develop, and utilize, and, where feasible, restore or enhance the natural resources of the state for present and future generations;

(b) protect private and public property rights; and

(c) coordinate all state natural resource policies, programs, and activities at the highest level; refine state permitting processes; and require the state to balance the economic, social, and environmental consequences of its natural resource decisions.

Natural Resources Council

Sec. 3. (a) The Natural Resources Council shall be composed of 16 voting members. If and at such time as the University of Houston System shall be created by the legislature, the membership of the NRC shall be increased to 17 voting members. Each of the following shall be represented on the NRC by one voting member:

- (1) Commissioner of Agriculture;
- (2) General Land Office;
- (3) Governor;
- (4) Parks and Wildlife Department;
- (5) Railroad Commission of Texas;
- (6) Texas Department of Health Resources;
- (7) State Department of Highways and Public Transportation;
- (8) State Soil and Water Conservation Board;
- (9) The Texas A&M University System;
- (10) Texas Air Control Board;
- (11) Texas Historical Commission;
- (12) Texas Industrial Commission;
- (13) Texas Water Development Board;
- (14) Texas Water Quality Board;
- (15) Texas Water Rights Commission;
- (16) The University of Texas System; and
- (17) The University of Houston System, if and at such time as such university system shall be created by the legislature.

(b) In addition, there shall be nine nonmember delegates to the NRC who shall participate in the discussions and deliberations of the NRC but who shall not vote on any questions before the NRC. Each of the following shall be represented to the NRC by one delegate:

- (1) the advisory committee created by this Act;
- (2) Attorney General;
- (3) Bureau of Economic Geology;
- (4) Governor's Budget and Planning Office;
- (5) Governor's Energy Advisory Council;

(6) Legislative Budget Board;

(7) Office of State-Federal Relations;

(8) Texas Coastal and Marine Council; and

(9) Texas Forest Service.

(c) The governor shall chair the NRC. The governor may designate a full-time alternate to chair the NRC in his stead. Such alternate shall hold no state office or state employment other than as a member of the governor's staff. Such designee shall have the same voting power as the governor when chairing the NRC as the governor's alternate.

(d) In addition to the governor, the voting members of the NRC and the nonvoting delegates to it shall be as follows:

(1) Each agency or university system which is both listed in Section 3(a) of this Act and governed by an appointive board or commission shall be represented on the NRC by an eligible member of such board or commission who shall be designated by the governor and who shall serve at the governor's pleasure. Only those board or commission members who do not serve as ex officio members of their respective boards or commissions shall be eligible to be designated by the governor for service on the NRC. Each such designated representative on the NRC may name an alternate representative from among the eligible members of the board or commission he represents to serve in his stead on the NRC.

(2) The commissioner of agriculture and the attorney general shall represent themselves, or be represented by their respective designees.

(3) The General Land Office shall be represented by the Commissioner of the General Land Office or his designee.

(4) The Railroad Commission of Texas shall be represented by its chairman or his designee.

(5) The Texas Forest Service shall be represented by the State Forester or his designee.

(6) The advisory committee created by this Act shall be represented by its chairman or his designee. Such designee shall be a member of the advisory committee.

(7) The Bureau of Economic Geology, the Governor's Energy Advisory Council, the Legislative Budget Board, the Office of State-Federal Relations, the Texas Coastal and Marine Council, and the Governor's Budget and Planning Office shall each be represented by their respective administrative heads or the respective designees of such administrative heads.

(8) Only a representative given voting power by this section, or that person's designee chosen in accordance with this section, shall have voting power on the NRC.

(e) A member of the NRC or delegate to the NRC who is unwilling or unable to continue in such capacity shall be replaced respectively by a member or delegate selected in the same manner as the member or delegate replaced.

(f) While on the business of the NRC, both the voting members of and the nonvoting delegates to the NRC shall be considered as on the business of the respective agencies, university systems, elected officials, or other bodies they represent.

(g) The governor is empowered to employ for the NRC a staff director and such other staff as he may deem necessary, to serve at the pleasure of the governor. In order to minimize additional expense to the taxpayers of the state, NRC staff requirements shall be minimized insofar as practicable by making maximum use of existing state agency personnel.

(h) Meetings of the NRC shall be held quarterly. In addition, a meeting of the NRC shall be held at the call of the governor, or upon written request of a majority of the members of the NRC. Notice of the date, hour, place, and subject of each meeting of the NRC, or of any committee of the NRC, shall be published in the Texas Register by the NRC not less than three days nor more than 14 days prior to such meeting. This requirement shall not be construed to alter, amend, or repeal any notice requirement pursuant to any other law of this state.

(i) The NRC may hold such hearings and conduct such studies as it deems proper.

(j) The NRC may make contracts and execute instruments that are necessary or convenient to the exercise of its powers or the performance of its duties.

(k) The NRC, acting through its chairman, is expressly authorized to receive and expend gifts, grants, and public funds in the performance of its duties.

Duties of the Natural Resources Council

Sec. 4. The NRC shall:

(a) assume all duties and responsibilities, statutory and otherwise, heretofore assigned to the Interagency Council on Natural Resources and the Environment;

(b) provide a forum for interagency communication and cooperation;

(c) provide information and assistance to member agencies of the NRC and to other agencies and the public;

(d) recommend to the state agencies and elected officials represented on the NRC improved methods of design, operation, administration, and maintenance of projects and programs to ensure proper protection and development of the state's natural resources;

(e) study problems and issues connected with natural resources and the use of natural resources and counsel with the governor and legislature on such problems and issues and any legislation needed to deal with them;

(f) develop and recommend to the governor standards for data collection, reporting, and storage; and

(g) study problems and issues connected with state agency permitting processes and recommend to the governor and legislature policies and procedures to deal with such problems and issues and to simplify and expedite the permitting processes of state agencies.

Limitations

Sec. 5. The NRC shall have only such powers and authority as it shall be granted expressly or by clear implication of statute. The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) shall apply to the proceedings and actions of the NRC.

Powers of the Governor

Sec. 6. The governor may make reasonable rules pertaining to reporting, storage, and retrieval formats for any data and research held or produced, or purchased wholly or partially, by any state agency. Data and research protected from disclosure by federal law or regulation or by state law shall not be subjected to disclosure by the provisions of this section, or by rule, order, or regulation made pursuant to the authority granted by this section. Nothing herein shall be construed to repeal, alter, or amend any of the provisions of Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes).

Advisory Committee

Sec. 7. (a) An advisory committee to the NRC is hereby created.

(b) The advisory committee shall have 15 members who shall be appointed by the governor and who shall be chosen to represent a balance of economic, social, and environmental interests. Of these, at least five members shall, for the duration of their service, be residents of those counties bordering on the Gulf of Mexico. The governor shall appoint one member to chair the committee.

(c) Five members of the advisory committee shall be appointed to serve until August 31, 1979; five members shall be appointed to serve until August 31, 1981; and five members shall be appointed to serve until August 31, 1983. Upon the expiration of the term of each member of the advisory committee, a successor shall be appointed to serve for a term of six years from the date of expiration. A member's term shall continue until a new member is appointed

to succeed him. A member may succeed himself. No member's term shall continue beyond the expiration of the NRC.

(d) A meeting of the advisory committee shall be held at the call of the person named to chair the committee, or upon written request of a majority of the members of the committee.

(e) The advisory committee shall advise the NRC on matters pertinent to natural resources and on related matters.

(f) The advisory committee is expressly empowered to call and conduct public hearings on matters pertinent to natural resources and on related matters in the public interest.

(g) Advisory committee staff requirements shall be met by the staff of the NRC, and no additional staff shall be employed by the advisory committee.

(h) Members of the advisory committee shall be entitled to be reimbursed for actual, reasonable, and necessary expenses for travel, meals, and lodging while on the business of the advisory committee provided that such expenses shall be reimbursable only to the same extent and under the same conditions as if the members of the advisory committee were state officials, according to the state appropriations act in effect at the time such business is conducted.

(i) An amount adequate to provide sufficient NRC staff to meet the staff needs of the advisory committee and to provide for other expenses incurred by the advisory committee in the performance of its duties shall be included in each budget request submitted to the legislature by the NRC.

Full State Cooperation

Sec. 8. Each state agency, university system, elected official, or other body that is represented by a member on, or a delegate to, the NRC shall, within constitutional and statutory limits, implement the policies of this Act and give full cooperation to the NRC in implementing the policies of this Act.

Expiration

Sec. 9. This Act shall expire on September 1, 1983.

Repeal

Sec. 10. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict, provided that only those laws and parts of laws expressly in conflict with the provisions of this Act are so repealed. [Acts 1977, 65th Leg., p. 1895, ch. 756, §§ 1 to 10, eff. Aug. 29, 1977.]

CHAPTER TEN. DEPARTMENT OF COMMUNITY AFFAIRS

Art. 4413(201). Department of Community Affairs

[See Compact Edition, Volume 4 for text of 1 to 3]

Application of Sunset Act

Sec. 3a. The Texas Department of Community Affairs is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the department is abolished, and this Act expires effective September 1, 1983.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 4 to 14]

[Amended by Acts 1977, 65th Leg., p. 1842, ch. 735, § 2.073, eff. Aug. 29, 1977.]

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 con-

tracts 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 extension 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 identifiable 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

- 4414aa. Application of Sunset Act [NEW].
- 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].
- 4437h. Surveys and Inspections of Health Care Facilities [NEW].
- 4438a. Denial of Emergency Treatment by Hospital Employee for Inability to Pay [NEW].
- 4447d-2. Immunization Reminder Notices [NEW].
- 4447e-1. Hypothyroidism [NEW].
- 4447e-2. Sudden Infant Death Syndrome.
- 4447r. Cooperative Associations by Eligible Institutions [NEW].
- 4447s. Disclosure of Agreements for Payment of Laboratory Tests.

Art. 4414a. Department of Health Created

To better protect and promote the health of the people of Texas, the Texas Department of Health is created. The Texas Department of Health consists of the Texas Board of Health, the Commissioner of Health, and an administrative staff.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975; Acts 1977, 65th Leg., p. 1226, ch. 474, § 1, eff. Aug. 29, 1977.]

Art. 4414aa. Application of Sunset Act

The Texas Department of Health Resources¹ is subject to the Texas Sunset Act;² and unless continued in existence as provided by that Act the department is abolished effective September 1, 1985. [Added by Acts 1977, 65th Leg., p. 1848, ch. 735, § 2.113, eff. Aug. 29, 1977.]

¹ Name changed to Department of Health; see art. 4418g.

² Article 5429k.

Art. 4415a. Appointment, Composition and Terms of the Board

(a) The Board 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 medicine 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 Board 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; Acts 1977, 65th Leg., p. 1226, ch. 474, § 1, eff. Aug. 29, 1977.]

Art. 4416a. Quorum and Meetings of the Board

A majority of the members of the Board constitute a quorum for the transaction of business. The Board shall meet at Austin or at other places fixed by the Board 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; Acts 1977, 65th Leg., p. 1226, ch. 474, § 1, eff. Aug. 29, 1977.]

Art. 4417a. Compensation and Oath of Office of the Board

The members of the Board 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 Board 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; Acts 1977, 65th Leg., p. 1226, ch. 474, § 1, eff. Aug. 29, 1977.]

Art. 4418a. Powers and Duties of the Board

The Texas Board of Health shall:

(1) employ the Commissioner of Health, 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 Department, 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, and for the conduct and performance of every duty imposed on the Board, the Department, or the Commissioner of Health by law, a copy of which rules shall be filed in the Department.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975; Acts 1977, 65th Leg., p. 1226, ch. 474, § 1, eff. Aug. 29, 1977.]

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 Commissioner of Health

The Commissioner of Health shall be the executive head of the Department, and he shall, subject to the provisions of this Act, perform the duties assigned to him by the Board.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975; Acts 1977, 65th Leg., p. 1226, ch. 474, § 1, eff. Aug. 29, 1977.]

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

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 Department 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; Acts 1977, 65th Leg., p. 1226, ch. 474, § 1, eff. Aug. 29, 1977.]

Art. 4418g. Powers, Duties and Functions Transferred to the Department of Health

(a) The Texas Board of Health has all of the powers, duties, and functions granted by law to the State Board of Health, the State Commissioner of Health, the State Department of Health, the Texas Board of Health Resources, and the Texas Department of Health Resources.

(b) Any reference in the law to the Texas Board of Health Resources means the Texas Board of Health.

(c) Any reference in the law to the Texas Department of Health Resources means the Texas Department of Health.

(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 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. Amended by Acts 1977, 65th Leg., p. 1226, ch. 474, § 1, eff. Aug. 29, 1977.]

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

Establishment

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.

Application of Sunset Act

Sec. 2.01a. The Texas Health Facilities Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and Subchapters B and C of this Act expire effective September 1, 1985.

¹ Article 5429k.

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 appropriate 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, safe-

ty, 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) In 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 certifi-

cate 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. 501 [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. Amended by Acts 1977, 65th Leg., p. 1848, ch. 735, § 2.114, eff. Aug. 29, 1977.]

Art. 4419e. Blind, Visually Handicapped and Otherwise Physically Disabled Persons; Use of Public Facilities

Policy

Sec. 1. The policy of the State of Texas is to encourage and enable the blind, the visually handicapped, and the otherwise physically disabled to participate fully in the social and economic life of the state, to achieve maximum personal independence, to become gainfully employed, and to otherwise fully enjoy and use all public facilities available within the state.

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.

(5) "Housing accommodations" means any real property, or portion thereof, which is used or occupied or is intended, arranged, or designed to be used or occupied as the home, residence, or sleeping place of one or more human beings, but shall not include any single family residence the occupants of which rent, lease, or furnish for compensation not more than one room therein.

[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.

(g) It is the policy of the State of Texas that the blind, the visually handicapped, and the otherwise physically disabled shall be employed by the state, by political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved.

(h) The blind, the visually handicapped, and the otherwise physically disabled shall be entitled to full and equal access, as other members of the general public, to all housing accommodations offered for rent, lease, or compensation in this state, subject to the conditions and limitations established by law and applicable alike to all persons.

(1) Nothing in this section shall require any person renting, leasing, or providing for compensation real property to modify his property in any way or provide a higher degree of care for a blind person, visually handicapped person, or otherwise physically disabled person than for a person who is not physically disabled.

(2) Every totally or partially blind person who has a guide dog, or who obtains a guide dog, shall be entitled to full and equal access to all housing accommodations provided for in this section, and he shall not be required to pay extra compensation for such guide dog but shall be liable for any damage done to the premises by such a guide dog.

[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; Acts 1977, 65th Leg., p. 1203, ch. 466, §§ 1 to 3, eff. Aug. 29, 1977.]

Section 3 of the 1975 Act provided:

"(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.

Construction, Operation and Equipment of Hospitals; Location; Sale of Property

Sec. 6. (a) 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 need not be located within the City or Cities.

(b) The Authority may sell any of its property without an election to a political subdivision of the State for the fair market value of the property if:

(1) the Board of Directors has notice of its intention to sell the property, a description of the property, and the scheduled date of the sale published in a newspaper or newspapers providing general circulation in the Authority once each week for two consecutive weeks, the first publication at least 14 days before the scheduled date of the sale; and

(2) a petition requesting an election on a proposition for or against the sale, signed by 10 percent or more of the qualified voters residing in the Authority is not presented to the secretary or president of the Board of Directors before the scheduled date of the sale.

(c) If a petition described in Subdivision (2), Subsection (b) of this section is presented to the secretary or president of the Board of Directors before the scheduled date of the sale, the property may be sold to a political subdivision only if an election on the proposition is held and a majority of the qualified voters voting in the election favor the sale. The Board shall call the election on receiving the petition or may call the election on its own motion if no petition is filed. The Board shall determine and the order calling the election shall specify the date, place, or places of holding the election, the form of ballot, and the presiding judge, alternate judge, and clerks for each voting place. Section 9b, Texas Election Code (Article 2.01b, Vernon's Texas Election Code), does not apply to the election. A substantial copy of the election order shall be published in a newspaper or newspapers of general circulation in the Authority once a week for two consecutive weeks, the first publication to appear at least 30 days before the election date. The form of the ballots at the election shall be in conformity with Section 61, Texas Election Code, as amended (Article 6.05, Vernon's Texas Election Code), so that ballots may be cast for or against the following proposition:

“The sale of by the Hospital Authority.” The Board shall canvass the returns and announce the results. Except as specifically provided in this section, the election shall be governed by the Texas Election Code.

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. If the Hospital is not leased 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 of Trust Indenture. In the event the Hospital is leased, it shall be the duty of the Board of Directors to provide that the lessee shall charge sufficient rates for services rendered by the Hospital which together with other sources of the lessee's revenues will produce revenues sufficient to enable the lessee to pay all expenses in connection with the operation and upkeep of the Hospital and to pay lease rentals to the Authority which will be sufficient, when taken with other pledged sources of the Authority's estimated revenues, 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, procedures, and policies under or in accordance with which the hospital shall be operated, and in the event the Hospital is leased, the Authority may delegate to the lessee the duty to establish the systems, methods, routines, procedures, and policies 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; Acts 1977, 65th Leg., p. 1309, ch. 517, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1358, ch. 539, § 1, eff. June 15, 1977.]

¹ Classified as art. 4437e-2.

² Article 717k.

Section 2 of the 1975 amendatory act and § 2 of Acts 1977, 65th Leg., p. 1309, ch. 517, 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. 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 hereinafter 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 ad-

mitted 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 reve-

nue 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, redemption 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.

Issuance 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 (Arti-

cle 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; Protest 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 publication 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 as 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

al 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 6]

Sec. 7. Applications for license shall be made to the Licensing Agency upon forms provided by it, and shall contain such information as the Licensing Agency may reasonably require. It shall be necessary that the Licensing Agency issuing licenses require that each hospital show evidence that there are one or more physicians on the medical staff of the hospital, and that these physicians are currently licensed by the Texas State Board of Medical Examiners.

The Licensing Agency may require that the application be approved by the local health officer, or other local official, for the compliance with city ordinances on building construction, fire prevention, and sanitation. Hospitals outside city limits shall comply with corresponding state laws.

Each application shall be accompanied by a license fee. In the event the application for a license is denied, such fee shall be refunded to the applicant.

All license fees collected shall be deposited with the State Treasury to the credit of the Licensing Agency and said license fees are hereby appropriated to said agency for its use in the administration and enforcement of this Act.

Each hospital so licensed shall pay a license fee, both initially and annually thereafter, of Two Dollars (\$2.00) per bed; but in no event shall the total fee exceed the sum of Five Hundred Dollars (\$500.00).

[See Compact Edition, Volume 4 for text of 8 and 9]

Failure to Comply with Health Planning and Development Act

Sec. 9A. 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 10 to 17]

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.04, eff. May 28, 1975; Acts 1977, 65th Leg., p. 1056, ch. 387, § 5, eff. Aug. 29, 1977.]

¹Article 4418h.

Art. 4437f-1. Hospital Laundry Cooperative Associations; Health Related State-Supported and Nonprofit Institutions Within Medical Centers in Counties Over 1,600,000 Population

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

Definitions

Sec. 2. The following terms used in this Act shall have the following meanings:

(1) "Eligible institutions" shall include only political subdivisions and municipalities of the State of Texas; 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; nonprofit health-related institutions; and cooperative associations created to provide certain systems as defined in Subsection (2), Section 2, Chapter 195, Acts of the 64th Legislature, Regular Session, 1975 (Article 4447r, Vernon's Texas Civil Statutes), 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, except for cooperative associations, 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.

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

Powers, Rights and Functions

Sec. 3. Associations established under this Act shall have the following specific powers, rights, and functions:

(1) to acquire, own, and operate a laundry system on a cooperative basis solely for the benefit of eligible institutions whether or not members of the association and to engage in such activities for the benefit of such eligible institutions as are necessarily related to the acquisition, ownership, operation, and maintenance of a laundry system;

(2) to acquire by purchase, lease, or otherwise lands and estates in lands (whether leasehold or otherwise) appropriate or reasonably incidental to the laundry system, and to own, hold, improve, develop, and manage any real estate so acquired, and 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 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 laundry system, including property for the cleaning, washing, steaming, bleaching, dry cleaning, and disinfecting of all types of clothing, cloths, and fabrics and the transportation and distribution of these articles, and to encumber and dispose of any such personal property;

(4) to acquire by purchase or otherwise any uniforms, clothing, or linen for its members;

(5) to borrow or raise money without limit as to amount; to sell, grant security interests in, pledge, and otherwise dispose of and realize upon accounts receivable, contract rights and other choses in action; 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.

[See Compact Edition, Volume 4 for text of 4 and 5]

Cooperative and Nonprofit Requirements; Franchise Tax Exemption; Annual Written Report; Disposition of Surplus Revenue

Sec. 6. 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 the laundry system to the surplus fund or divide such funds among the patrons thereof in proportion to their respective contributions to the working capital of the association and patronage.

[See Compact Edition, Volume 4 for text of 7 to 14]

[Amended by Acts 1977, 65th Leg., p. 1231, ch. 476, §§ 4 to 6, eff. June 15, 1977.]

Section 7 of the 1977 amendatory act provided:

"If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of 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. 4437h. Surveys and Inspections of Health Care Facilities

Sec. 1. The purpose of this Act is to require that state agencies, including the Texas Department of Health Resources,¹ the Department of Public Welfare,² and those agencies with which each contracts,

who perform surveys, inspections, and investigations of health care facilities, do not duplicate their procedures or subject such health care facilities to duplicious rules and regulations.

Sec. 2. For the purposes of this Act:

(1) "Health care facility" shall have the same definition as that given in the Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes).

(2) "Inspection" means all surveys, inspections, investigations, and other procedures necessary for a state agency or a division or unit thereof to perform in order to carry out various obligations imposed on such agency by applicable state and federal law and regulations.

Sec. 3. State agencies shall make or cause to be made only such inspections necessary to carry out the various obligations imposed on each agency by applicable state and federal law and regulations. Any on-site inspection by a state agency or a division or unit thereof that substantially complies with the inspection requirements of any other state agency or any other division or unit of the inspecting agency charged with making similar inspections shall be accepted as an equivalent inspection in lieu of an on-site inspection by said agency or by a division or unit of the inspecting agency. A state agency shall coordinate its health care facility inspections both internally and with those required by other state agencies so as to insure that the requirements of this section are met.

Sec. 4. (a) All hospitals licensed by the Texas Department of Health Resources which have been certified under Title XVIII of the Social Security Act, as added July 30, 1965 (Public Law 89-97),³ or which have obtained accreditation from the Joint Commission on Accreditation of Hospitals or which have obtained accreditation from the American Osteopathic Association shall not be subject to licensing inspections under the Texas Hospital Licensing Law⁴ by the agency so long as such certification or accreditation is maintained. Such hospitals shall only be required to annually remit the statutory licensing fees in order to be issued a license by the licensing agency.

(b) The State Department of Public Welfare and the Texas Department of Health Resources shall establish procedures to eliminate or reduce duplication of functions in certifying nursing homes for payments under the requirements of the Medical Assistance Act of 1967, as amended (Article 695j-1, Vernon's Texas Civil Statutes), and federal laws and regulations relating to Title XIX of the Social Security Act.⁵ The procedures established under this section shall provide for use by both agencies of infor-

mation collected by either agency in making inspections for certification purposes and in investigating complaints regarding matters that would affect the certification of a nursing home.

[Acts 1977, 65th Leg., p. 1055, ch. 387, §§ 1 to 4, eff. Aug. 29, 1977.]

¹ Name changed to Department of Health; see art. 4418g.
² Name changed to Department of Human Resources; see art. 695c, § 2-A.
³ 42 U.S.C.A. § 1395 et seq.
⁴ Article 4437f.
⁵ 42 U.S.C.A. § 1396 et seq.

Art. 4438a. Denial of Emergency Treatment by Hospital Officer or 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. 4439. Repealed by Acts 1977, 65th Leg., p. 316, ch. 149, § 1, eff. May 13, 1977

See, now, art. 4477, rules 3 and 13.

Art. 4442c. Convalescent and Nursing Homes and Related Institutions

[See Compact Edition, Volume 4 for text of 1 to 3]

Application for License

Sec. 4. An application for a license shall be made to the Licensing Agency upon forms provided by it and contain such information as the Licensing Agency requires which may include affirmative evidence of ability to comply with reasonable standards, rules and regulations as are lawfully prescribed hereunder. The application shall be accompanied by a license fee which shall be in the sum of Twenty-five Dollars (\$25) plus One Dollar (\$1) for each unit of capacity or bed space for which a license is sought. Such license fee shall be paid annually in said amount with each application for renewal of the institution's license. All license fees provided for herein shall be waived for the State of Texas and its departments, divisions, boards and agencies. All license fees collected shall be deposited with the State Treasury to the credit of the Licensing Agency and said license fees are hereby appropriated to said

Agency for its use in the administration and enforcement of this Act.

Upon receipt of an application for a license the Licensing Agency shall issue a license if upon inspection and investigation it finds that the applicant and facilities meet the requirements established under this law. A license, unless suspended or revoked, shall be renewed annually after an inspection and upon tender of the annual license fee together with the filing by the licensee and approval by the Licensing Agency of an annual report upon such date and containing such information in such form as the Licensing Agency prescribes by regulation. Such license shall be issued only for the premises and persons or governmental units and for the maximum number of beds named in the application and shall not be transferable or assignable. Any approved increase in the bed space shall be subject to an additional fee. Any violation of these provisions shall be guilty of a misdemeanor and upon conviction shall be subject to the penalties provided for in Section 12 of this Act.

[See Compact Edition, Volume 4 for text of 5 and 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.

Emergency Suspension and Closing Order

Sec. 6B. (a) If the Licensing Agency finds an institution operating in violation of the standards prescribed by this Act and the violations create an immediate threat to the health and safety of a resident in the institution, the Licensing Agency shall suspend the license or order an immediate closing of the institution or part of an institution; and the Licensing Agency shall by rule provide for patient placement during the period of suspension to assure the health and safety of the patients in said institution.

(b) The order suspending a license under Subsection (a) of this section is immediately effective upon written notice to the license holder or on the date specified on the order.

(c) The order suspending the license and ordering an institution or part of an institution closed is valid for 10 days after the effective date.

Rules, Regulations and Enforcements

Sec. 7. The Licensing Agency is authorized to adopt, amend, promulgate, publish and enforce minimum standards in relation to:

(a) Construction of the home or institution, including plumbing, heating, lighting, ventilation and other housing conditions, which shall insure the health, safety and comfort of residents and protection from fire hazard;

(b) Regulate the number and qualification of all personnel, including management and nursing personnel, having responsibility for any part of the care given to residents, and establish requirements for in-service education of all employees who have any contact with residents;

(c) All sanitary and related conditions within the nursing home and its surroundings, including water supply, sewage disposal, food handling and general hygiene, which shall insure the health, safety and comfort of the residents;

(d) Diet related to the needs of each resident and based upon good nutritional practice or on recommendations which may be made by the physician attending the resident;

(e) Equipment essential to the health and welfare of the residents;

(f) At least one unannounced inspection per year shall be mandatory; further inspections may be required by the Licensing Agency;

(g) For at least one unannounced inspection in each year as required by Subsection (f) of this section, the Licensing Agency shall arrange to invite in the inspection at least one person as a citizen advocate from one of the following groups: American Association of Retired Persons, the Texas Senior Citizen Association, or the Texas Retired Federal Employees, or any other statewide organization for the elderly;

(h) The use and administration of medications in conformity with applicable law and rules and regulations on the use and administration of medications; all personnel administering medications must have completed a state-approved training program in medication administration;

(i) Grading each home or institution so as to recognize those homes or institutions that go beyond the minimum level of services and personnel, as established by the agency and such attained grade shall be prominently displayed for public view and as incentive to attain the superior grade, allow each home or institution to advertise such grade.

(j) The Licensing Agency shall require one medical examination per patient per year. The details of this examination will be specified by the Licensing Agency.

The Licensing Agency is further authorized to provide for advice to and coordination of its personnel and facilities with any local agency of a city or county where such city or county shall see fit to supplement the state program with further regulations required to meet local conditions.

Language Requirements Prohibited

Sec. 7A. No institution may prohibit a resident or employee from communicating in his or her native language with other residents or employees for the purpose of acquiring or providing medical treatment, nursing care, or institutional services.

[See Compact Edition, Volume 4 for text of 8]

Inspections and Consultations

Sec. 9. The Licensing Agency shall make or cause to be made such inspections and investigations as it deems necessary. The Licensing Agency shall hold at least one open hearing a year in each licensed institution to hear any complaints of substandard care or licensing violations. The Licensing Agency shall notify the institution, the designated closest living relatives or legal guardians of the institution's residents, and other appropriate State or Federal agencies that work with the institution of the time, place, and date of the hearing. The Licensing Agency may exclude an institution's administrators and personnel from the hearing. The Licensing Agency shall notify an institution of any complaints received at the hearing. The Licensing Agency shall provide a summary of the complaints without identifying the source thereof to the licensed institution. The Licensing Agency shall determine and implement a mechanism to notify confidentially the complainant of the results of the investigation which followed the complaint. It is further provided that the Licensing Agency shall wherever possible utilize the services and consultation of other State and local agencies in carrying out its responsibility under the provisions of this Act and shall use wherever possible the facilities of the State Department of Public Welfare especially in setting up and maintaining standards with reference to the humane treatment of the individuals in the institutions.

The Licensing Agency is hereby given the authority to cooperate with local public health officials of any county or incorporated city in carrying out the provisions of this Act and may in its discretion delegate to said local authorities the power to make the inspections and recommendations to the Licensing Agency in accordance with the terms and provisions of this Act.

[See Compact Edition, Volume 4 for text of 10]

Injunction and Temporary Restraining Order

Sec. 11. (a) When the Licensing Agency finds that a person's violations of the standards prescribed by this Act create an immediate threat to the health and safety of the residents of an institution, the Licensing Agency may petition the district court for a temporary restraining order to restrain the person from continuing the violations.

(b) When a person violates the licensing requirements or the standards prescribed by this Act, the Licensing Agency may petition the district court for an injunction to prohibit a person from continuing the violation or to restrain or prevent the establishment, conduct, management, or operation of an institution without a license under this Act. A suit for a temporary restraining order or other injunctive relief must be brought in the judicial district that includes the county of the alleged violation.

(c) On application for injunctive relief and a finding that a person is violating the licensing requirements or standards prescribed by this Act, the district court shall grant the injunctive relief the facts may warrant.

(d) At the request of the Licensing Agency, the attorney general shall institute and conduct the suits authorized in Subsections (a) and (b) of this section in the name of the State of Texas.

Penalties

Sec. 12. (a) Any person establishing, conducting, managing, or operating any institution without a license under this law shall be guilty of a misdemeanor and upon conviction shall be fined not more than Two Hundred Dollars (\$200) for the first offense and not more than One Hundred Dollars (\$100) for each subsequent offense, and each day of a continuing violation after conviction shall be considered a separate offense.

(b) A person who violates this Act or who fails to comply with a rule or regulation authorized by this Act determined by the Licensing Agency to threaten the health and safety of the patient is subject to a civil penalty of not less than \$100 nor more than \$500 for each act of violation, and each day of a continuing violation constitutes a separate ground of recovery.

Sec. 13. Repealed by Acts 1977, 65th Leg., 1st C.S., p. 55, ch. 2, § 11, eff. July 22, 1977.

[See Compact Edition, Volume 4 for text of 14 and 15]

Reports of Abuse and Neglect

Sec. 16. (a) Persons required to Report.

(1) Any person or any owner or employee of a nursing home having cause to believe that a nursing home resident's physical or mental health or welfare has been or may be adversely affected by abuse or neglect caused by another person, or persons shall report in accordance with Section 16(b).

(2) Each nursing home employee shall be required to sign a statement that he or she realizes his or her criminal liability for failure to

report such abuses as a condition of employment by the nursing home.

(b) Contents of Report. (1) Nonaccusatory reports reflecting the reporting person's belief that a nursing home resident has been or will be abused or neglected or has died of abuse or neglect shall be made to:

(A) the Licensing Agency; or

(B) any local or state law enforcement agency.

(2) All reports must contain the name and address of the nursing home resident, the name and address of the person responsible for the care of the resident, if available, and any other relevant information.

(3) All reports received by any local or state law enforcement agency shall be referred to the Licensing Agency or to the agency designated by the court to be responsible for the protection of the nursing home resident.

(4) An oral report shall be made immediately on learning of the abuse or neglect and a written report shall be made within five days to the same agency. Anonymous reports, while not encouraged, will be received and acted on in the same manner as acknowledged reports. Anonymous reports about a specific individual, accusing the individual of abuse or neglect, need not be investigated.

(c) Immunities. Any person reporting pursuant to this chapter is immune from liability, civil or criminal, that might otherwise be incurred or imposed because of the making of the report or reports. Immunity extends to participation in any judicial proceeding resulting from the report. Persons reporting in bad faith or with malice are not protected by this section. A person making a bad faith, malicious, or reckless report is subject to the criminal penalty of a Class A misdemeanor, in addition to any civil penalties.

(d) Privileged Communications. In any proceeding regarding the abuse or neglect of a nursing home resident or the cause of any abuse or neglect, evidence may not be excluded on the ground of privileged communication except in the case of communications between attorney and client.

(e) Investigation and Report of Receiving Agency.

(1) The Licensing Agency or the agency designated by the court to be responsible for the protection of nursing home residents 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 nursing home resident.

(2) In the investigation the agency shall determine:

(a) the nature, extent, and cause of the abuse or neglect;

(b) the identity of the person responsible for the abuse or neglect;

(c) the names and conditions of the other nursing home residents in the nursing home;

(d) an evaluation of the persons responsible for the care of the nursing home residents;

(e) the adequacy of the nursing home environment; and

(f) all other pertinent data.

(3) The investigation shall include a visit to the resident's nursing home and an interview with the subject nursing home resident. If admission to the nursing home, or any place where the nursing home resident may be, cannot be obtained, the district court, upon cause shown, shall order the persons responsible for the care of the nursing home resident, or the person in charge of any place where the nursing home resident may be, to allow entrance for the interview and investigation.

(4) If, before the investigation is complete, the opinion of the Licensing Agency is that immediate removal is necessary to protect the nursing home resident from further abuse or neglect, the Licensing Agency shall file a petition for temporary care and protection of the nursing home resident.

(5) The agency designated by the court to be responsible for the protection of the nursing home resident or the Licensing Agency shall make a complete written report of the investigation. The report, together with its recommendations, shall be submitted to the district attorney and the appropriate law enforcement agency.

(f) Central Registry. The Licensing Agency shall establish and maintain in Austin, Texas, a central registry of reported cases of nursing home resident abuse or neglect. The Licensing Agency may adopt rules and regulations as are necessary in carrying out the provisions of this section. The rules shall provide for cooperation with hospitals and clinics in the exchange of these reports.

(g) Failure to Report; Penalty. (1) A person commits an offense if the person has cause to believe that a nursing home resident'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 Subsection (a)(1).

(2) An offense under this section is a Class A misdemeanor.

(h) 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 regulations adopted by the investigating agency.

Prohibition of Remuneration

Sec. 17. (a) No institution may receive remuneration, either monetary or otherwise, from any indi-

vidual, corporation, company, or agency which furnishes services or materials to the institution or its occupants for a fee.

(b) The Licensing Agency may seek the revocation of the license of an institution that violates the prohibition in Subsection (a) of this section.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.05, eff. May 28, 1975; Acts 1977, 65th Leg., 1st C.S., p. 49, ch. 2, §§ 1 to 7, 9, 11, eff. July 22, 1977.]

¹ Article 4418h.

Section 8 of the 1977 Act provides as follows:

"(a) The Department of Public Welfare shall contract those medical functions and quality of care functions, including quality assurance and consultation, level of care determination, periodic medical review, utilization review, and related program support, pertaining to long-term care regulation and services performed by the Medical Assistance Unit under the authority of the State Department of Public Welfare to the Texas Department of Health. The contract shall include all provisions necessary to ensure compliance with federal law and regulations, including submission of reports and other information requested by the State Department of Public Welfare, for purposes of Title XIX of the Social Security Act. After January 1, 1978, if the Governor of Texas makes a finding that the public interest will be served, he shall direct the Department of Public Welfare to request a waiver from the Department of Health, Education, and Welfare to allow the Texas Department of Health to perform those medical and quality of care functions pertaining to long-term care regulation and services performed by the Medical Assistance Unit of the State Department of Public Welfare.

"(b) If a contract is executed or a waiver is obtained, the funds, personnel, equipment, and central office supporting personnel relating to the functions described in Subsection (a) are to be included in the contract between the State Department of Public Welfare and the Texas Department of Health or transferred by the waiver.

"(c) The functions of eligibility determination, health related social services, vendor drug program, and provider payments related to long-term care are not included in the programs to be contracted under this section."

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 and 2]

Creation and Composition of Board

Sec. 3.

[See Compact Edition, Volume 4 for text of 3(1) to (9)]

(10) The Texas Board of Licensure for Nursing Home Administrators is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1979.

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 4 and 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 oth-

erwise 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; Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.012, eff. Aug. 29, 1977.]

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 commu-

nicate 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 interest 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.

Application of Sunset Act

Sec. 1a. The Texas Coordinating Commission for State Health and Welfare Services is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1985.

¹Article 5429k.

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; Acts 1977, 65th Leg., p. 1847, ch. 735, § 2.105, eff. Aug. 29, 1977.]

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. 4447e-1. Hypothyroidism**Detection Program; Diagnostic Laboratory**

Sec. 1. The Texas Department of Health Resources¹ shall establish a program to detect hypothyroidism in newborn infants. The department shall establish a diagnostic laboratory for conducting screening and other undertakings necessary to develop and carry out tests for the early detection of hypothyroidism.

¹ Name changed to Department of Health; see art. 4418g.

Cooperation of Physicians and Hospitals

Sec. 2. The department may invite the cooperation of physicians and hospitals in the state which provide maternity and newborn infant care to participate in any program established under this Act.

Gifts and Donations

Sec. 3. The department may receive gifts and donations on behalf of a program established under this Act.

Diagnosis and Treatment

Sec. 4. When a positive test is confirmed, the services and facilities of the department and other boards, agencies, and political subdivisions in the state cooperating in the program shall be made available to establish a definitive diagnosis and to supervise treatment as a service to the family and attending physician.

Liability for Failure to Give Permission for Tests

Sec. 5. No physician, technician, or person giving a test for hypothyroidism is liable or responsible because of a failure or refusal of a parent or guardian to give permission for tests provided in the screening program under this Act.

Services and Facilities to Aid Program

Sec. 6. The various boards, agencies, and political subdivisions of the state capable of assisting the department in carrying out a program established under this Act are encouraged to furnish their services and facilities to aid the program.

Rules

Sec. 7. The department may adopt rules necessary to carry out the program established pursuant to this Act.

[Acts 1977, 65th Leg., p. 905, ch. 339, §§ 1 to 7, eff. Aug. 29, 1977.]

Art. 4447e-2. Sudden Infant Death Syndrome

Sec. 1. When a child under the age of two years dies within this state under circumstances of sudden death, cause unknown, or found dead, cause unknown, that death shall be immediately reported to the justice of the peace, coroner, medical examiner, or other proper official under the law, wherein the body lies, whereupon the justice of the peace, coroner, or medical examiner shall inform the parents or legal guardian of the child that they may request an autopsy performed on the child, the reasonable cost of which shall be borne by the state. An autopsy requested by the parents or legal guardians shall be arranged for by the justice of the peace, coroner, or medical examiner and the parents or legal guardians shall be promptly notified of the results of that autopsy. The reasonable cost of the autopsy performed under this section shall be reported to the director of Health Resources who shall in turn instruct the comptroller to pay the account to the person entitled thereto out of funds appropriated for this purpose by the legislature. The reasonableness and propriety of all claims and accounts under this section shall be passed upon and determined by the director of Health Resources. Nothing in this section shall be construed as interfering with the duties and responsibilities of the justice of the peace, coroner, or medical examiner as defined in other sections of the law.

Sec. 2. Sudden Infant Death Syndrome (SIDS) is hereby recognized and may be used as a primary cause of death, when applicable, in such certification as is required by Rule 40a, Sanitary Code for Texas, as amended (Article 4477, Revised Civil Statutes of Texas, 1925).

Sec. 3. The Texas Department of Health Resources¹ shall develop and disseminate to proper agencies, governmental bodies, officials, physicians, nurses, health professionals, and citizens a model program that can be used in follow-up consultation and information about Sudden Infant Death Syndrome (SIDS) and its characteristic grief-guilt reaction. It is the intent of this section to initiate a model program that can be used to humanize and

maximize the understanding and the handling of Sudden Infant Death Syndrome (SIDS) in this state. The Texas Department of Health Resources may appoint an advisory committee to assist it in the development of such program.

[Acts 1977, 65th Leg., p. 1196, ch. 462, §§ 1 to 3, eff. Aug. 29, 1977.]

¹ Department of Health Resources abolished and Department of Health created by Acts 1977, 65th Leg., ch. 474; see art. 4418g.

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 political subdivisions and municipalities of the State of Texas; 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; and cooperative associations created to provide a system as defined in Subsection (2) of this Section 2, 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, except for cooperative associations, 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 laun-

dering 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 whether or not members of the association and to engage in such activities for the benefit of such eligible institutions 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 purchase, 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 patrons thereof in proportion to their respective contributions to the working capital of the association and patronage.

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 hereunder 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. Amended by Acts 1977, 65th Leg., p. 1230, ch. 476, §§ 1 to 3, eff. June 15, 1977.]

Section 7 of the 1977 amendatory act provided:

"If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of 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. 4447s. Disclosure of Agreements for Payment of Laboratory Tests

Sec. 1. No person licensed in this state to practice medicine, dentistry, podiatry, veterinary medicine, or chiropractic shall agree with any clinical, bioanalytical, or hospital laboratory, wherever located, to make payments to such laboratory for individual tests, combination of tests, or test series for patients unless such person discloses on the bill or statement to the patient or third party payor's the name and address of such laboratory and the net amount or amounts paid to or to be paid to such laboratory for individual tests, combination of tests, or test series.

Sec. 2. The board or agency responsible for licensing and regulation of persons practicing medicine, dentistry, podiatry, veterinary medicine, and chiropractic, in addition to other authority granted, may deny an application for license or other authority to practice for violation of Section 1 of this Act. [Acts 1977, 65th Leg., p. 1528, ch. 621, §§ 1, 2, eff. June 15, 1977.]

CHAPTER THREE. FOOD AND DRUGS

Article

- 4476-5a. Laetrile; Manufacture, Distribution, Sale, Prescription, and Use [NEW].
 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. 4476-5a. Laetrile; Manufacture, Distribution, Sale, Prescription, and Use

Sec. 1. (a) It is lawful to manufacture amygdalin (laetrile) in this state in accordance with the provisions of the Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes) and to sell the substance in the state for distribution by licensed physicians.

(b) A licensed physician may prescribe or administer amygdalin (laetrile) in the treatment of cancer.

(c) No hospital or health care facility may forbid or restrict the use of amygdalin (laetrile) when prescribed or administered by a physician and requested by a patient, unless the substance, as prescribed or administered by the physician, is found to be harmful by the Texas Board of Health Resources after a hearing conducted as provided in the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) No physician may be subject to disciplinary action by the Texas State Board of Medical Examiners for prescribing or administering amygdalin (laetrile) to a patient under the physician's care and who has requested the substance, unless the Texas State Board of Medical Examiners has made a formal finding, in a hearing conducted as provided in the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), that the substance is harmful.

Sec. 2. Nothing in this Act shall deny the right of the Texas State Board of Medical Examiners to cancel, revoke, or suspend the license of any practitioner of medicine who:

- (1) fails to keep complete and accurate records of purchases and disposal of amygdalin (laetrile). A physician shall keep records of his purchases and disposals of amygdalin (laetrile) to include, but not be limited to, date of pur-

chase, sale or disposal of amygdalin (laetrile) by the doctor, the name and address of the person receiving amygdalin (laetrile), and the reason for disposing of or dispensing amygdalin (laetrile) to such person;

(2) writes prescriptions for or dispenses to a person known to be an habitual user of narcotic drugs or dangerous drugs, or to a person who the doctor should have known was an habitual user of narcotic or dangerous drugs. This provision shall not apply to those persons being treated by the physician for their narcotic use after the physician notifies the Texas State Board of Medical Examiners in writing of the name and address of such person being so treated;

(3) uses any advertising statement of a character tending to mislead or deceive the public; or

(4) is unable to practice medicine with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.

[Acts 1977, 65th Leg., p. 571, ch. 204, §§ 1, 2, eff. Aug. 29, 1977.]

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 4.12]

SUBCHAPTER 5. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

[See Compact Edition, Volume 4 for text of 5.01 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 or any agency or unit of government employing the seizing officer. 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) and (c)]

(d) If it is found beyond a reasonable doubt that the property is subject to forfeiture, then the judge shall upon motion forfeit the property to the Department of Public Safety or any agency or unit of government employing the seizing officer. However, if proof at the hearing discloses that the interest of any bona fide lienholder, secured party, or

other person holding an interest in the property in the nature of a security interest is greater than or equal to the present value of the property, the court shall order the property released to him. If such interest is less than the present value of the property and if the proof shows beyond a reasonable doubt that the property is subject to forfeiture, the court shall order the property forfeited to the Department of Public Safety or any agency or unit of government employing the seizing officer.

(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)]

(c) The Department of Public Safety or any agency or unit of government employing the seizing officer may maintain, repair, use, and operate for official purposes all property that has been forfeited to it if it is free from any interest of a bona fide lienholder, secured party, or other party who holds an interest in the property in the nature of a security interest. The department or agency receiving the forfeited vehicle may purchase the interest of a bona fide lienholder, secured party, or other party who holds an interest so that the property can be released for use by the department or agency receiving the forfeited vehicle. The department or agency receiving the forfeited vehicle may maintain, repair, use, and operate the property with money appropriated to the department or agency for current operations.

If the property is a motor vehicle susceptible of registration under the motor vehicle registration laws of this state, the department or agency receiving the forfeited vehicle is deemed to be the purchaser and the certificate of title shall be issued to it as required by Subsection (e) of this section.

(d) Storage charges on any property accrued while the property is stored at the request of a seizing officer of the department or agency receiving the forfeited vehicle pending the outcome of the forfeiture proceedings shall be paid by the department or agency out of its appropriations if such property after final hearing is not forfeited to the department or agency.

[See Compact Edition, Volume 4 for text of 5.08(e) to 5.11]
Education and Research

Sec. 5.12.

[See Compact Edition, Volume 4 for text of 5.12(a) and (b)]

(c) The executive director of the Texas Department of Community Affairs may establish accreditation standards for drug abuse treatment programs and treatment personnel consistent with those required by federal law and regulation and certify those drug abuse treatment programs and treatment personnel meeting accreditation standards.

[See Compact Edition, Volume 4 for text of 5.13 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; Acts 1977, 65th Leg., p. 1269, ch. 492, §§ 1 and 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1860, ch. 737, § 1, eff. June 16, 1977.]

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 promotion 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:

[See Compact Edition, Volume 4 for text of Rules 1 and 2]

Rule 3. "Contagious Diseases."—The term "contagious disease" as used in these regulations shall be held to include the following diseases, whether contagious or infectious; and as such shall be reported to all local health authorities and by said authority reported in turn to the Chairman of the State Board of Health: Asiatic cholera, bubonic

plague, typhus fever, yellow fever, Hansen's disease, smallpox, scarlet fever (scarlatina), diphtheria (membranous croup), epidemic cerebrospinal meningitis, dengue, typhoid fever, epidemic dysentery, trachoma, and anthrax.

[See *Compact Edition, Volume 4 for text of Rules 4 to 12*]

Rule 13. Dangerous Contagious Diseases; Modified Quarantine.—In the management and control of smallpox, scarlet fever (scarlatina), diphtheria (membranous croup), and dengue, it is required that the house be placarded, premises placed in modified quarantine, patient in modified isolation, and complete disinfection done upon death or recovery.

QUARANTINE AND DISINFECTION

[See *Compact Edition, Volume 4 for text of Rules 14 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. Any person may apply to the State Department of Health to have any indication of illegitimacy removed from his or her birth record, including separate medical records. The Department shall charge a fee of \$10.00 for this service. All items prescribed on the certificate of birth are hereby declared necessary for the legal, social and sanitary purposes subserved by registration records. The name of the father or any information by which he might be identified may be written in the birth or death certificate of any child:

(a) whose mother was married at the time of conception or birth; or whose mother was subsequently married to the father; or

(b) where paternity of the father has been established in a judicial proceeding. The State Department of Health shall be specifically authorized to use and to provide upon request to other state agencies records pertaining to all 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) who becomes the legitimate child of its father 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 supplement-

tary 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.

Rule 47b. "For Medical and Health Use Only" Section of Birth Certificate.—The section entitled "For Medical and Health Use Only" shall not be considered a part of the legal certificate of birth.

[See Compact Edition, Volume 4 for text of Rules 48 to 51]

Rule 51a. Blanks and Registration Forms; Index of Births and Deaths; Records; Transcripts; Fees; Delayed Registrations; Judicial Procedure to Establish Facts of Birth

[See Compact Edition, Volume 4 for text of A]

B. Delayed Registration of Births.

Subject to the regulations and requirements of the State Department of Health:

[See Compact Edition, Volume 4 for text of B 1 to 8]

9. For each application for a delayed certificate of birth, the State Registrar shall be entitled to a fee not to exceed Ten Dollars (\$10.00), said fee to be paid by the applicant. All such fees received by the State Registrar under the provisions of this Section shall be deposited and used as provided in Section 21 of this Act.

[See Compact Edition, Volume 4 for text of C and D and Rules 52 to 54]

Rule 54a. Copies of Records.—Subject to the regulations of the Texas Department of Health Resources¹ controlling the accessibility of vital records, the State Registrar shall, upon request, supply to any properly qualified applicant a certified copy of a record, or any part thereof, registered under the provisions of this Act.² The State Registrar is entitled to a fee of Three Dollars (\$3.00) for the first copy of a record or part of a record and One Dollar (\$1.00) for each additional copy of the record or part of the record requested by the applicant in a single request. The fee is to be paid by the applicant. Certified copies shall be issued only in the form approved by the Texas Department of Health Resources. And any such copy of a record, when properly certified by the State Registrar, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files where a record is not found or a certified copy is not made, the State Registrar shall be entitled to a fee of Three Dollars (\$3.00), said fee to be paid by the applicant. The State Registrar shall, upon request of any parent or guardian, supply, without fee, a certificate limited to a statement as to the date of birth of any child when the same shall be necessary for admission to school, or for the purpose of securing employment. The State Registrar shall issue free of cost to any veteran, his widow, orphan or other dependents, a certified copy of any record not otherwise prohibited by law when such record is to

be used in the settlement of a claim against the government. The State Registrar may issue, upon court order, without fee, a certified copy of a birth record in cases relating to child labor and the public schools. Provided, that the national agency in charge of the collection of vital statistics may obtain, without expense to the State, transcripts of vital records without payment of the fees herein prescribed; and provided further, that the State Registrar is hereby authorized to act as special agent for that agency in accepting the use of the franking privilege and blanks furnished by that agency; and provided further, that the Bureau of Vital Statistics of the Texas Department of Health Resources is hereby authorized to enter into a contract with the national agency in charge of the collection of vital statistics in order to have transcribed for that agency copies of vital records filed with the State Bureau of Vital Statistics. The State Registrar shall keep a true and correct account of all money received by him under these provisions, and deposit the same with the State Treasurer at the close of each month and at such other intervals as the Registrar deems advisable, and all such money shall be kept by the State Treasurer in a special and separate fund, to be known as the vital statistics fund, and the amounts so deposited in this fund shall be used for defraying expenses incurred in the enforcement and operation of this Act.

The State Registrar shall refund to the applicant any fee received for services which the Bureau cannot render. If the money has been deposited in the vital statistics fund, the Comptroller shall issue a warrant against the fund, upon presentation of a claim signed by the State Registrar, for the purpose of refunding the payment.

The State Registrar shall be entitled to a fee of Five Dollars (\$5.00) for filing a new birth certificate based on adoption, a fee of Eight Dollars (\$8.00) for filing a new birth certificate based on legitimation or paternity determination, and a fee of Five Dollars (\$5.00) for filing an amendment to a birth certificate based on a court order of change of name, said fees to be paid by the applicants.

¹ Department of Health Resources abolished and Department of Health created by Acts 1977, 65th Leg., ch. 474; see art. 4418g.

² Rules 34a to 55a of this article and art. 4477c.

[See Compact Edition, Volume 4 for text of Rules 55 to 76]

[Amended by Acts 1975, 64th Leg., p. 117, ch. 54, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 30, ch. 14, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 316, ch. 149, §§ 2 and 3, eff. May 13, 1977; Acts 1977, 65th Leg., p. 1689, ch. 669, §§ 1, 2, eff. Jan. 1, 1978; Acts 1977, 65th Leg., p. 2089, ch. 837, §§ 1, 2, eff. Aug. 29, 1977.]

Acts 1977, 65th Leg., p. 1689, ch. 669, which by §§ 1 and 2 amended subsec. B, par. 9 of rule 51a and rule 54a of this article, provided in § 3: "This Act takes effect January 1, 1978."

**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 4]

Disposal of Human Excreta

Sec. 5.

[See Compact Edition, Volume 4 for text of
5(a) and (b)]

(c) No privy shall hereafter be constructed within seventy-five (75) feet of any drinking water well or of a human habitation other than to which it is appurtenant without approval by the Local Health Officer or the Texas Board of Health Resources¹ and no privy shall be erected or maintained over any abandoned well or over any stream; provided further that no privy shall be constructed or maintained in any unincorporated village which shall hereafter come within the provisions of Article 4434-35 of the Revised Civil Statutes of Texas, 1925, which is located within thirteen hundred and twenty (1320) feet of any water well which is used for drinking water purposes, and the construction, maintenance, and use of such privy in violation of this section shall be a nuisance.

¹ Board of Health Resources abolished and Board of Health created by Acts 1977, 65th Leg., ch. 474; see art. 4418g.

[See Compact Edition, Volume 4 for text of
5(d) to 10]

Protection of Public Water Supplies

Sec. 11.

[See Compact Edition, Volume 4 for text of
11(a) and (b)]

(c) The owner or manager of every water supply system furnishing drinking water to 25,000 or more persons shall have the water tested at least once daily for the determination of its sanitary quality and shall furnish the Texas Department of Health Resources with monthly reports thereof. The owner or manager of any water plant supplying drinking water to less than 25,000 persons, according to the latest Federal Census and such revised Federal Census as may hereafter be taken and established, or by other population-determining methods in all such cases where Federal Census are not taken, shall submit to the Texas Department of Health Resources at least one (1) specimen of water taken from the supply for the purpose of bacteriological analysis during each monthly period of the operation of such service.

[See Compact Edition, Volume 4 for text of
11(d) to 22]

Authority of Home Rule Cities Not Affected

Sec. 23. (a) All provisions of this Act are hereby declared to constitute minimum requirements of sanitation and health protection within the State of Texas and shall in no way affect the authority of Home Rule Cities to enact more stringent ordinances pertaining to the matters herein referred to, and shall in no way affect the authority of Home Rule Cities to enact ordinances as granted to them under Article XI, Section V of the State Constitution, and Articles 1175-76 of the Revised Civil Statutes of Texas of 1925.

(b) The Texas Board of Health Resources may adopt rules consistent with the general intent and purposes of this Act, and establish standards and procedures for the management and control of sanitation and health protective measures.

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.

Penalty

Sec. 24. Any person, firm or corporation who shall violate any of the provisions of any Section or sub-division of this Act, or any rule adopted under this Act, shall be fined not less than Ten Dollars (\$10.00) and not more than Two Hundred Dollars (\$200.00), and each day of such violation shall constitute a separate offense.

Enforcement

Sec. 25. The Texas Department of Health Resources may apply to any district court in this state to enforce, prevent, or restrain violations of this Act or violations of rules adopted pursuant to this Act. [Amended by Acts 1975, 64th Leg., p. 227, ch. 86, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1188, ch. 456, §§ 1 to 5, eff. Aug. 29, 1977.]

Art. 4477-5. Texas Clean Air Act

[See Compact Edition, Volume 4 for text of
1.01 to 2.01]

Application of Sunset Act

Sec. 2.01a. The Texas Air Control Board is subject to the Texas Sunset Act;¹ and unless continued

in existence as provided by the Act the board is abolished, and this Act expires effective September 1, 1985.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 2.02 to 6.01]

[Amended by Acts 1977, 65th Leg., p. 1844, ch. 735, § 2.084, eff. Aug. 29, 1977.]

Art. 4477-7. Solid Waste Disposal Act

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

Definitions

Sec. 2. As used in this Act, unless the context requires a different definition:

(1) "person" means individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity;

(2) "department" means the Texas Department of Health Resources;¹

(3) "department of water resources" means the Texas Department of Water Resources;

(4) "local government" means a county; an incorporated city or town; or a political subdivision exercising the authority granted under Section 6 of this Act;

(5) "solid waste" means all putrescible and nonputrescible discarded or unwanted solid materials, including garbage, refuse, sludge from a waste treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from community activities, but does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued pursuant to the Texas Water Quality Act;

(ii) soil, dirt, rock, sand and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas and are subject to control by the Texas Railroad Commission;

(6) "municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and

all other solid waste other than industrial solid waste;

(7) "industrial solid waste" means solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations;

(8) "garbage" means solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products;

(9) "rubbish" means nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials; combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials which will not burn at ordinary incinerator temperatures (1600°F to 1800°F);

(10) "sanitary landfill" means a controlled area of land upon which solid waste is disposed of in accordance with standards, regulations or orders established by the department or the board;

(11) "processing" means the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of hazardous waste so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume;

(12) "composting" means the controlled biological decomposition of organic solid waste under aerobic conditions;

(13) "person affected" means any person who is a resident of a county or any county adjacent or contiguous to the county in which a site, facility or plant is 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; and

(14) "hazardous waste" means any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency pursuant to the Federal Solid Waste Disposal Act.²

¹ Name changed to Department of Health; see art. 4418g.

² 42 U.S.C.A. § 6901 et seq.

State Solid Waste Agency; Designations; Duties

Sec. 3. (a) The department is hereby designated the state solid waste agency with respect to the collection, handling, storage, processing, and disposal of municipal solid waste, and shall be the coordinating agency for all municipal solid waste activities. The department shall be guided by the Texas Board of Health Resources in its activities relating to municipal solid waste. The department shall seek the accomplishment of the purposes of this Act through the control of all aspects of municipal solid waste collection, handling, storage, processing, and disposal by all practical and economically feasible methods consistent with the powers and duties given the department under this Act and other existing legislation. The department has the powers and duties specifically prescribed in this Act and all other powers necessary or convenient to carry out its responsibilities. The department shall consult with the department of water resources with respect to the water pollution control and water quality aspects, and with the Texas Air Control Board with respect to the air pollution control and ambient air quality aspects, of the matters placed under the jurisdiction of the department by this Act.

(b) The department of water resources is hereby designated the state solid waste agency with respect to the collection, handling, storage, processing, and disposal of industrial solid waste, and shall be the coordinating agency for all industrial solid waste activities. The department of water resources shall seek the accomplishment of the purposes of this Act through the control of all aspects of industrial solid waste collection, handling, storage, processing, and disposal by all practical and economically feasible methods consistent with the powers and duties given it under this Act and other existing legislation. The department of water resources has the powers and duties specifically prescribed in this Act and all other powers necessary or convenient to carry out its responsibilities. The department of water resources shall consult with the department with respect to the public health aspects, and with the Texas Air Control Board with respect to the air pollution control and ambient air quality aspects, of the matters placed under the jurisdiction of the department of water resources by this Act.

(c) Where both municipal solid waste and industrial solid waste are involved in any activity of collecting, handling, storing, processing, or disposing of solid waste, the department is the state agency responsible and has jurisdiction over the activity; and, with respect to that activity, the department may exercise all of the powers, duties and functions vested in the department by this Act.

State Agencies; Authority and Powers; Permits

Sec. 4. (a) As used in this section the term "state agency" refers to either the department or the department of water resources, and "state agencies" means both the department and the department of water resources.

(b) The department is authorized to develop a state municipal solid waste plan, and the department of water resources is authorized to develop a state industrial solid waste plan. The state agencies shall coordinate the solid waste plans developed. Before a state agency adopts its solid waste plan or makes any significant amendments to the plan, the Texas Air Control Board shall have the opportunity to comment and make recommendations on the proposed plan or amendments, and shall be given such reasonable time to do so as the state agency may specify.

(c) Each state agency may adopt and promulgate rules and regulations consistent with the general intent and purposes of this Act, and establish minimum standards of operation for all aspects of the management and control of the solid waste over which it has jurisdiction under this Act, including but not limited to collection, handling, storage, processing, and disposal.

(d) Each state agency is authorized to inspect and approve sites used or proposed to be used for the storage, processing, or disposal of the solid waste over which it has jurisdiction.

(e) Except as provided in Subsection (f) of this section with respect to certain industrial solid wastes, each state agency has the power to require and issue permits authorizing and governing the operation and maintenance of sites used for the storage, processing, or disposal of solid waste. This power may be exercised by a state agency only with respect to the solid waste over which it has jurisdiction under this Act. If this power is exercised by a state agency, that state agency shall prescribe the form of and reasonable requirements for the permit application and the procedures to be followed in processing the application, to the extent not otherwise provided for in this subsection. The following additional provisions apply if a state agency exercises the power authorized in this subsection:

(1) The state agency to whom the permit application is submitted shall mail a copy of the application or a summary of its contents to the Texas Air Control Board, to the other state agency, to the mayor and health authorities of any city or town within whose territorial limits or extraterritorial jurisdiction the solid waste storage, processing, or disposal site is located, and to the county judge and health authorities of the county in which the site is located. The governmental entities to whom the information

is mailed shall have a reasonable time, as prescribed by the state agency to whom the application was originally submitted, to present comments and recommendations on the permit application before that state agency acts on the application.

(2) A separate permit shall be issued for each site. The permit shall include the names and addresses of the person who owns the land where the solid waste storage, processing, or disposal site is located and the person who is or will be the operator or person in charge of the site; a legal description of the land on which the site is located; and the terms and conditions on which the permit is issued, including the duration of the permit.

(3) The state agency may extend or renew any permit it issues in accordance with reasonable procedures prescribed by the state agency. The procedures prescribed in Paragraph (1) of this Subsection (e) for permit applications apply also to applications to extend or renew a permit.

(4) Before a permit is issued, extended or renewed, the state agency to which the application is submitted shall issue notice and hold a hearing in the manner provided for other hearings held by the agency.

(5) Before a permit is issued, extended or renewed, the state agency to which the application is submitted may require the permittee to execute a bond or give other financial assurance conditioned on the permittee's satisfactorily closing the disposal site on final abandonment.

(6) If a permit is issued, renewed or extended by a state agency in accordance with this Subsection (e), the owner or operator of the site does not need to obtain a license for the same site from a county, or from a political subdivision exercising the authority granted in Section 6 of this Act.

(7) A permit is issued in personam and does not attach to the realty to which it relates. A permit may not be transferred without prior notice to and prior approval by the state agency which issued it.

(8) The state agency has the authority, for good cause, after hearing with notice to the permittee and to the governmental entities named in Paragraph (1) of this Subsection (e), to revoke or amend any permit it issues for reasons pertaining to public health, air or water pollution, land use, or violation of this Act or of any other applicable laws or regulations controlling the disposal of solid waste.

(9) Manufacturing and processing establishments, commonly known as rendering plants, which process for any purpose waste materials

originating from animals, poultry, and fish (all hereinafter referred to as "animals") and materials of vegetable origin, including without limitation animal parts and scraps, offal, paunch manure, and waste cooking grease of animal and vegetable origin are subject to regulation under the industrial solid waste provisions of this Act and may also be regulated under Chapter 26, Water Code. When a rendering establishment is owned by a person who operates the rendering establishment as an integral part of an establishment engaged in manufacturing or processing for animal or human consumption food derived wholly or in part from dead, slaughtered, or processed animals, poultry, or fish, the combined business may operate under authority of a single permit issued pursuant to Chapter 26, Water Code. The provisions of this subsection do not apply to those rendering plants in operation and production on or before August 27, 1973.

(f)(1) This subsection applies to the collection, handling, storage, processing, and disposal of industrial solid waste which is disposed of within the property boundaries of a tract of land owned or otherwise effectively controlled by the owners or operators of the particular industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, and which tract of land is within 50 miles from the plant or operation which is the source of the industrial solid waste. This subsection does not apply if the waste is collected, handled, stored, or disposed of with solid waste from any other source or sources or if the waste, which is collected, handled, stored, processed, or disposed of is hazardous waste. The department of water resources may not require a permit under this Act for the disposal of any solid waste to which this subsection applies, but this does not change or limit any authority the department of water resources may have with respect to the requirement of permits, the control of water quality, or otherwise, under Chapter 26, Water Code. However, the department of water resources may adopt rules and regulations as provided under Subsection (c) of this section to govern and control the collection, handling, storage, processing, and disposal of the industrial solid waste to which this subsection applies so as to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection. The department of water resources may require a person who disposes or plans to dispose of industrial solid waste under the authority of this subsection to submit to the department of water resources such information as may be reasonably required to enable the department of water resources to determine whether in its judgment the waste disposal activity is one to which this subsection applies.

(2) After the expiration of 90 days following the identification and listing of wastes as hazardous waste, no person shall process, store, or dispose of hazardous industrial solid wastes under this subsection without having first obtained a hazardous waste permit issued by the board; provided, however, that any person processing, storing, or disposing of hazardous waste under this subsection who has filed a hazardous waste permit application in accordance with the rules and regulations of the board may continue to process, store, or dispose of hazardous waste until such time as the board approves or denies the application. Upon its own motion or the request of a person affected, the board may hold a public hearing on an application for a hazardous waste permit. The board by rule shall establish procedures for public notice and any public hearing authorized by this subsection.

(g) The state agencies may, either individually or jointly:

(1) provide educational, advisory, and technical services to other agencies of the state, regional planning agencies, local governments, special districts, institutions, and individuals with respect to solid waste management and control, including collection, storage, handling, processing, and disposal;

(2) assist other agencies of the state, regional planning agencies, local governments, special districts, and institutions in acquiring federal grants for the development of solid waste facilities and management programs, and for research to improve the state of the art; and

(3) accept funds from the federal government for purposes relating to solid waste management, and to expend money received from the federal government for those purposes in the manner prescribed by law and in accordance with such agreements as may be necessary and appropriate between the federal government and each state agency.

If a state agency engages in any of the programs and activities named in this subsection on an individual basis, it may do so only as the participation by that state agency is related to the management and control of the solid waste over which it has jurisdiction. When the state agencies do not participate jointly, they shall coordinate on any efforts undertaken by either one individually so that similar programs and activities of the state agencies will be compatible.

(h) The state agencies are authorized to administer and expend state funds provided to them by legislative appropriations, or otherwise, for the purpose of making grants to local governments for solid waste planning, the installation of solid waste facilities, and the administration of solid waste programs. The grants made under the terms of this Act shall

be distributed in a manner determined by the state agency to whom the appropriation is made. Any financial assistance granted by the state through either of the state agencies to any local government under the terms of this Act must, at a minimum, be equally matched by local government funds.

County Powers

Sec. 5. (a) Every county has the solid waste management powers which are enumerated in this Section 5. However, the exercise of the licensing authority and other powers granted to counties by this Act does not preclude the department or the department of water resources from exercising any of the powers vested in the department or the department of water resources under other provisions of this Act, including specifically the provisions authorizing the department and the department of water resources to issue permits for the operation and maintenance of sites for the processing or disposal of solid waste. The powers specified in Subsections (d) and (e) of this section and Section 18 of the County Solid Waste Control Act (Article 4477-8, Vernon's Texas Civil Statutes) may not be exercised by a county with respect to the industrial solid waste disposal practices and areas to which Subsection (f) of Section 4 of this Act applies. The department or the department of water resources, by specific action or directive, may supersede any authority or power granted to or exercised by a county under this Act, but only with respect to those matters which are, under this Act, within the jurisdiction of the state agency acting.

(b) A county is authorized to appropriate and expend money from its general revenues for the collection, handling, storage and disposal of solid waste and for administering a solid waste program; and to charge reasonable fees for the services.

(c) A county may develop county solid waste plans and coordinate those plans with the plans of local governments, regional planning agencies, other governmental entities, the department, and the board.

(d) Except as provided in Subsection (a) of this section, a county is empowered to require and issue licenses authorizing and governing the operation and maintenance of sites used for the processing or disposal of solid waste in areas not within the territorial limits or extraterritorial jurisdiction of incorporated cities and towns. If a county elects to exercise licensing authority, it must adopt, promulgate, and enforce rules or regulations for the management of solid waste. The rules or regulations shall not be less stringent than those of, and must be approved by, the department or the board as appro-

priate. The following additional provisions apply if a county exercises the power authorized in this Subsection (d):

(1) The county shall mail a copy of the license application with pertinent supporting data to the department, the board, and the Texas Air Control Board. The governmental entities to whom the information is mailed shall have a reasonable time, as prescribed by the county, to submit comments and recommendations on the license application before the county acts on the application.

(2) A separate license shall be issued for each site. The license shall include the names and addresses of the person who owns the land where the waste disposal site is located and the person who is or will be the operator or person in charge of the site; a legal description of the land on which the site is located; and the terms and conditions on which the license is issued, including the duration of the license. The county is authorized to charge a fee for a license of not to exceed \$100.00, as set by the commissioners court of the county. Receipts from the fees shall be placed in the general revenue fund of the county.

(3) The county may extend or renew any license it issues in accordance with rules and regulations prescribed by the county. The procedures prescribed in Paragraph (1) of this Subsection (d) apply also to applications to extend or renew a license.

(4) No license for the use of a site for processing or disposal of solid waste may be issued, renewed, or extended without the prior approval, as appropriate, of the department or the department of water resources. If a license is issued, renewed, or extended by a county in accordance with this Subsection (d), the owner or operator of the site does not need to obtain a permit from the department or the department of water resources for the same site.

(5) A license is issued in personam and does not attach to the realty to which it relates. A license may not be transferred without prior notice to and prior approval by the county which issued it.

(6) The county has the authority, for good cause, after hearing with notice to the licensee and to the governmental entities named in Paragraph (1) of this Subsection (d), to revoke or amend any license it issues for reasons pertaining to public health, air or water pollution, land use, or violation of this Act or of any other applicable laws or regulations controlling the disposal of solid waste. For like reasons, the department and the department of water resources each may, for good cause, after hearing

with notice to the licensee, the county which issued the license, and the other governmental entities named in Paragraph (1) of this Subsection (d), revoke or amend any license issued by a county, but only as to those sites which fall, under the terms of this Act, within the jurisdiction of the state agency acting.

(e) Subject to the limitation specified in Subsection (a) of this section, a county may designate land areas not within the territorial limits or extraterritorial jurisdiction of incorporated cities and towns as suitable for use as solid waste disposal sites. The county shall base these designations on the principles of public health, safety, and welfare, including proper land use, compliance with state statutes, and any other pertinent considerations.

(f) A county is authorized to enforce the requirements of this Act and the rules and regulations promulgated by the department and the board as related to the handling of solid waste.

(g) Repealed by Acts 1971, 62nd Leg., p. 1763, ch. 516, § 20, eff. Aug. 30, 1971.

(h) A county may enter into cooperative agreements with local governments and other governmental entities for the purpose of the joint operation of solid waste collection, handling, storage, processing or disposal facilities, and to charge reasonable fees for the services.

[See Compact Edition, Volume 4 for text of 6]

Right of Entry; Inspections; Access to Hazardous Waste Records

Sec. 7. (a) The authorized agents or employees of the department, the department of water resources, and local governments have the right to enter at all reasonable times in or upon any property, whether public or private, within the governmental entity's jurisdiction, including in the case of an incorporated city or town, its extraterritorial jurisdiction, for the purpose of inspecting and investigating conditions relating to solid waste management and control. Agents and employees shall not enter private property having management in residence without notifying the management, or the person in charge at the time, of their presence and exhibiting proper credentials. The agents and employees shall observe the rules and regulations of the establishment being inspected concerning safety, internal security, and fire protection.

(b) The authorized agents or employees of the department and the board may have access to, examine, and copy during regular business hours any records pertaining to hazardous waste management and control.

(c) Records copied pursuant to Subsection (b) of this section shall be public records, except that, if a showing satisfactory to the commissioner of the department or to the executive director of the board is

made by the owner of such records that the records would divulge trade secrets if made public, then the department or the board shall consider such copied records as confidential. Nothing in this subsection shall require the board or the department to consider the composition or characteristics of solid waste being treated, stored, disposed, or otherwise handled to be held confidential.

Prohibited Acts; Violations; Penalties; Injunction

Sec. 8. (a) No person may cause, suffer, allow or permit the collection, storage, handling or disposal of solid waste, or the use or operation of a site for the disposal of solid waste, in violation of this Act or of the rules, regulations, permits, licenses or other orders of the department or the department of water resources, or a county or a political subdivision exercising the authority granted in Section 6 of this Act within whose jurisdiction the violation occurs.

(b) Any person who violates any provision of this Act or of any rule, regulation, permit, license, or other order of the department or the department of water resources, or a county or a political subdivision exercising the authority granted in Section 6 of this Act within whose jurisdiction the violation occurs, is subject to a civil penalty of not less than \$50.00 nor more than \$1,000.00 for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this Section 8.

(c) 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, permit, or other order of the department or the department of water resources, then the department or the department of water resources 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 \$50.00 nor more than \$1,000.00 for each act of violation and for each day of violation, as the court may deem proper, or for both injunctive relief and civil penalty. Upon 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, permit, or other order of the department or the department of water resources, the district court shall grant appropriate injunctive relief. At the request of the department or the executive director of the department of water resources when authorized by the Texas Water Development 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 this subsection.

(d) Whenever it appears that a violation or threat of violation of any provision of this Act, or of any rule, regulation, permit, license, or other order of the department, the department of water resources, a county, or a political subdivision exercising the authority granted in Section 6 of this Act, has occurred or is occurring within the jurisdiction of that county or political subdivision, the county or political subdivision, in the same manner as the department of water resources and the department, may cause a civil suit to be instituted in a district court through its own attorney for the injunctive relief or civil penalties, or both, as authorized in Subsection (c) of this section, against the person who committed, is committing, or is threatening to commit, the violation.

(e) Whenever it appears that a violation or threat of violation of any provision of this Act, or of any rule, regulation, permit, license, or other order of the department, the department of water resources, a county, or political subdivision exercising the authority granted in Section 6 of this Act, has occurred or is occurring within the area of the extraterritorial jurisdiction of an incorporated city or town, or is causing or will cause injury to or an adverse effect on the health, welfare or physical property of the city or town or its inhabitants, then the city or town, in the same manner as the department of water resources and the department, may cause a civil suit to be instituted in a district court through its own attorney for the injunctive relief or civil penalties, or both, as authorized in Subsection (c) of this section, against the person who committed, is committing, or is threatening to commit, the violation.

(f) A suit for injunctive relief or for recovery of a civil penalty, or for both injunctive relief and penalty, may be brought either in the county where the defendant resides or in the county where the violation or threat of violation occurs. In any suit brought to enjoin a violation or threat of violation of this Act or of any rule, regulation, permit, license or other order of the department of water resources, the department, a county, or a political subdivision exercising the authority granted in Section 6 of this Act, the court may grant the governmental entity bringing the suit, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including temporary restraining orders after notice and hearing, temporary injunctions, and permanent injunctions.

(g) In a suit brought by a local government under Subsection (d) or (e) of this section, the department of water resources and the department are necessary and indispensable parties.

(h) Any party to a suit may appeal from a final judgment as in other civil cases.

(i) All civil penalties recovered in suits instituted under this Act by the State of Texas through the

department of water resources or the department shall be paid to the General Revenue Fund of the State of Texas. All civil penalties recovered in suits first instituted by a local government or governments under this Act shall be equally divided between the State of Texas on the one hand and the local government or governments on the other, with 50 per cent of the recovery to be paid to the General Revenue Fund of the State of Texas and the other 50 per cent equally to the local government or governments first instituting the suit.

Appeals

Sec. 9. A person affected by any ruling, order, decision, or other act of the department or the department of water resources may appeal by filing a petition in a district court of Travis County. A person affected by any ruling, order, decision, or other act of a county, or of a political subdivision exercising the authority granted in Section 6 of this Act, may appeal by filing a petition in a district court having jurisdiction in the county or political subdivision. The petition must be filed within 30 days after the date of the action, ruling, order, or decision of the governmental entity complained of. Service of citation must be accomplished within 30 days after the date the petition is filed. 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 governmental entity whose action is appealed, unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay. In an appeal from an action by the department, the department of water resources, a county, or a political subdivision exercising the authority granted in Section 6 of this Act, the issue is whether the action is invalid, arbitrary or unreasonable. [Amended by Acts 1977, 65th Leg., p. 825, ch. 308, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2337, ch. 870, §§ 2 to 7, eff. Sept. 1, 1977.]

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, in-

cluding, 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.

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 proceedings 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. 4477-11. Texas Tuberculosis Code

Repealer

Acts 1977, 65th Leg., p. 752, ch. 282, classified as Art. 3201a-4, transfers control of the East Texas Chest Hospital from the Department of Health to the University of Texas System. Section 7 of the Act provides, in part, " * * insofar as applicable to the East Texas Chest Hospital, Subsections (b) through (e) of Section 12 and all of Section 15, Texas Tuberculosis Code (Article 4477-11, Vernon's Texas Civil Statutes), are repealed."*

Art. 4477-12. Prevention, Eradication and Control of Tuberculosis

[See Compact Edition, Volume 4 for text of 1 to 3]

Examination of Pupils for Tuberculosis Infection

Sec. 4. The Texas Board of Health Resources may provide for the examination for tuberculosis infection of pupils in the first and seventh grades of the public, parochial and private schools of this state, and of pupils transferred to the public, parochial and private schools of this state from another state or country.

Annual Certificate of Examination of School Personnel

Sec. 5. All school personnel, including teachers, clerical employees, supervisory personnel, bus drivers, personnel handling food and personnel performing janitorial services, shall be required to furnish the governing board of any public school in this state on or before the first day of each school year a certificate signed by a physician licensed to practice medicine, revealing that such school personnel have

been examined for the disease of tuberculosis during a period of time not exceeding one hundred twenty (120) days prior to the first day of each school year of each year, and revealing the results of such examination. The results of these examinations shall be furnished the Texas Board of Health Resources upon request. No person shall be permitted to perform his or her duties in the absence of such certificate being furnished the governing board of the school.

[See Compact Edition, Volume 4 for text of 6 and 7]

Sec. 8. Repealed by Acts 1977, 65th Leg., p. 1180, ch. 452, § 3, eff. Aug. 29, 1977.

[See Compact Edition, Volume 4 for text of 9 and 10]

[Amended by Acts 1977, 65th Leg., p. 1179, ch. 452, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 4477-13. Repealed by Acts 1977, 65th Leg., p. 754, ch. 282, § 8, eff. Sept. 1, 1977

Prior to repeal, this article was amended by Acts 1975, 64th Leg., p. 2193, ch. 700, § 1.

See, now, art. 3201a-4.

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 FOUR D. HEMOPHILIA
[NEW]**

Article

4477-30. Hemophilia Assistance Program.

Art. 4477-30. Hemophilia Assistance Program

Definitions

Sec. 1. In this Act:

(1) "Hemophilia" means a human physical condition characterized by bleeding resulting from a genetically determined deficiency of a blood coagulation factor or hereditarily resulting in an abnormal or deficient plasma procoagulant.

(2) "Committee" means the hemophilia advisory committee.

(3) "Department" means the Texas Department of Health Resources.

(4) "Program" means the hemophilia assistance program.

(5) "Director" means the director of health resources.

(6) "Administrator" means a person employed or appointed by the director to administer the program.

Hemophilia Assistance Program

Sec. 2. (a) There is established in the department a hemophilia assistance program to assist persons who have hemophilia and who require continuing treatment with blood, blood derivatives, or manufactured pharmaceutical products but who are unable to pay the entire cost.

(b) The department shall, in the order of priority listed:

(1) set standards of eligibility for assistance under this Act;

(2) provide financial assistance for medically eligible persons, through approved providers, in obtaining blood, blood derivatives and concentrates, and other substances for use in medical or dental facilities or in the home.

Administrator

Sec. 3. (a) The administrator is responsible for carrying out the hemophilia assistance program.

(b) The administrator shall report to the director.

(c) The administrator may employ two persons in carrying out the program.

Funding Sources

Sec. 4. (a) The department may accept grants, gifts, and donations from individuals, private or public organizations, or federal or local funds for the support of the hemophilia assistance program.

(b) The department shall investigate any potential sources of funding from federal grants or programs.

Hemophilia Advisory Committee

Sec. 5. (a) There is established a hemophilia advisory committee which shall review the program and consult with the department in the administration of the program. The department shall make an annual report of the program to the committee.

(b) The committee consists of 12 members appointed by the director as follows:

(1) three members representing hospitals where hemophilia treatment occurs;

(2) two members representing voluntary agencies interested in hemophilia;

(3) three members who are medical specialists in hemophilia patient care;

(4) three members who are adult hemophiliacs or parents of hemophiliacs; and

(5) one member representing the general public.

(c) Except for those first appointed, members are appointed for terms of six years, expiring January 31 of odd-numbered years. If a vacancy occurs on the committee, the director shall appoint a member to serve the unexpired portion of the term.

(d) In making the initial appointments, the director shall appoint four members for terms expiring in 1983, four for terms expiring in 1981, and four for terms expiring in 1979.

(e) The committee shall meet annually, and the committee may meet at other times as necessary.

(f) The members of the committee shall serve without compensation but may be reimbursed for travel expenses incurred by committee activities. [Acts 1977, 65th Leg., p. 732, ch. 274, §§ 1 to 5, eff. Aug. 29, 1977.]

CHAPTER FIVE. COUNTY HOSPITAL

Article

4494n-3. Validating Creation and Organization of Hospital Districts with Population of Less Than 40,000 [NEW].

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. 4478. Authority

The commissioners court of any county shall have power to establish a county hospital and any medical or other health facilities and to enlarge any existing hospitals or facilities for the care and treatment of persons suffering from any illness, disease or injury, subject to the provisions of this chapter. At intervals of not less than twelve months, ten per cent of the qualified property tax paying voters of a county may petition such court to provide for the establishing or enlarging of a county hospital, or any medical or other health facilities, in which event said court within the time designated in such petition shall submit to such voters at a special or regular election the proposition of issuing bonds in such aggregate amount as may be designated in said petition for the establishing or enlarging of such hospital or facilities. Whenever any such proposition shall receive a majority of the votes of the qualified property tax payers voting at such election, said commissioners court shall establish and maintain such hospital or facilities and shall have the following powers:

1. To purchase and lease real property therefor, or acquire such real property, and easements therein, by condemnation proceedings.

2. To purchase or erect all necessary buildings, make all necessary improvements and repairs and alter any existing buildings, for the use of said hospital or facilities. The plans for such erection, alteration, or repair shall first be approved by the State Health Officer, if his approval is requested by the said commissioners court.

3. To cause to be assessed, levied and collected, such taxes upon the real and personal property owned in the county as it shall deem necessary to provide the funds for the maintenance thereof, and for all other necessary expenditures therefor.

4. To issue county bonds to provide funds for the establishing, enlarging and equipping of said hospital or facilities and for all other necessary permanent improvements in connection therewith; to do all other things that may be required by law in order to render said bonds valid.

5. To appoint a board of managers for said hospital or facilities, or both.

6. To accept and hold in trust for the county, any grant or devise of land, or any gift or bequest of money or other personal property or any donation to be applied, principal or income or both, for the benefit of said hospital or facilities, and apply the same in accordance with the terms of the gift.

7. The Commissioners Court may lease all or part of any medical facility so constructed, purchased or acquired under this Act.

8. The Commissioners Court of any county may close by order on terms it considers reasonable any medical facility constructed, purchased, or acquired under this Act, and this order shall be final thirty days after promulgation unless at least ten per cent of the qualified electors in the county petition the Commissioners Court within the thirty days requesting that an election be held in the county to determine whether or not the medical facility should be closed. On proper petition, the Commissioners Court shall set a time for an election and shall submit to the qualified electors of the county ballots providing for voting for or against the proposition: "The closing of (Name of medical facility to be closed)."

[Amended by Acts 1977, 65th Leg., p. 2, ch. 2, § 1, eff. Feb. 23, 1977.]

Section 2 of the 1977 amendatory act (which added subd. 8 to this article), provided:

"Nothing in this Act shall exempt any county commissioners court from any provision of the Health Planning and Development Act of 1975 (Art. 4418h)."

Art. 4494n. County Hospital Districts; Counties of 190,000 or More and Galveston County

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

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. 4494n-3. Validating Creation and Organization of Hospital Districts with Population of Less Than 40,000

Sec. 1. All proceedings and actions had and taken in the creation of any hospital district created under the provisions of Article IX, Section 9 of the Constitution of Texas, with a population of less than 40,000 according to the last preceding federal census, the appointment or election of directors or the governing body of such districts, and all proceedings and actions had and taken by the board of directors or governing body of such districts in organizing, selecting officers, tax elections, voting, authorizing,

selling, and issuing bonds of such districts and all proceedings and actions relating to any of the foregoing, are hereby in all things and all respects ratified, confirmed, approved, and validated, notwithstanding that any of the aforementioned proceedings and actions may not in all respects have been had in accordance with statutory provisions.

Sec. 2. The creation, organization, and the tax election of all of such hospital districts and all proceedings relating thereto are hereby in all things and all respects ratified, confirmed, approved, and validated, notwithstanding that same may not in all respects have been accomplished in accordance with statutory provisions.

Sec. 3. All bonds, including tax and revenue bonds, voted or authorized but undelivered bonds, as well as outstanding bonds authorized, approved, sold, or issued of any hospital district, and all elections at which bonds were voted for any purpose, are hereby in all things and all respects ratified, confirmed, approved, and validated, notwithstanding the fact that the governing body of such district may have failed to comply with all statutory requirements and notwithstanding that any election held by any such district may not in all respects have been ordered and held in accordance with statutory provisions. When the attorney general has approved such bonds

and they have been registered by the Comptroller of Public Accounts of the State of Texas and sold and delivered, they shall be binding, legal, valid, and enforceable obligations of any such district, and said bonds shall be incontestable. Provided, however, that, with respect to bonds required by law to be authorized at an election held within any such district, this Act shall apply only to such bonds as were authorized at an election or elections wherein at least a majority of the votes cast by the qualified voters in the district, voting thereat, were in favor of the issuance of the bonds.

Sec. 4. This Act shall not be construed as validating any proceedings or bonds issued or to be issued, the validity of which is contested or under attack in any suit or litigation pending at the time this Act becomes effective, if such suit or litigation is ultimately determined against the validity thereof.

Sec. 5. If any word, phrase, sentence, or portion of this Act is for any reason held unconstitutional, the unconstitutionality thereof shall not affect the remaining words, phrases, sentences, or portions of the Act.

[Acts 1977, 65th Leg., p. 845, ch. 316, §§ 1 to 5, eff. May 30, 1977.]

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.
Angelina County	Acts 1977, 65th Leg., p. 1480, ch. 603.
Burleson County	Acts 1977, 65th Leg., p. 1807, ch. 726.
East Coke County	Acts 1969, 61st Leg., p. 1485, ch. 444, amended by Acts 1977, 65th Leg., p. 662, ch. 249.
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.
Hood County	Acts 1971, 62nd Leg., p. 2594, ch. 852, amended by Acts 1977, 65th Leg., p. 312, ch. 145.
Kleberg County	Acts 1977, 65th Leg., p. 1359, ch. 540.
Lavaca	Acts 1975, 64th Leg., p. 23, ch. 16.
Lipscomb	Acts 1975, 64th Leg., p. 2014, ch. 667.
Mabank-Kemp	Acts 1973, 63rd Leg., p. 26, ch. 22, amended by Acts 1977, 65th Leg., p. 2137, ch. 854.
Menard County	Acts 1975, 64th Leg., p. 2001, ch. 665, amended by Acts 1977, p. 1751, ch. 700.
Midland County	Acts 1977, 65th Leg., p. 232, ch. 112.
Montgomery County	Acts 1977, 65th Leg., p. 678, ch. 258.

Hospital Districts

Name	Creation
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.
Nacogdoches County -----	Acts 1967, 60th Leg., p. 987, ch. 431, amended by Acts 1977, 65th Leg., p. 318, ch. 151.
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.
Reagan -----	Acts 1977, 65th Leg., p. 45, ch. 29.
Refugio County Memorial -----	Acts 1977, 65th Leg., p. 11, ch. 6.
Sabine County -----	Acts 1975, 64th Leg., p. 1829, ch. 565, amended by Acts 1977, 65th Leg., p. 1177, ch. 450.
Shackelford County -----	Acts 1977, 65th Leg., p. 298, ch. 140.
Starr County -----	Acts 1973, 63rd Leg., p. 243, ch. 118, amended by Acts 1977, 65th Leg., p. 35, ch. 18.
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.
Walker County -----	Acts 1971, 62nd Leg., p. 2583, ch. 848, amended by Acts 1977, 65th Leg., p. 1325, ch. 527.
West Coke County -----	Acts 1963, 58th Leg., p. 825, ch. 315, amended by Acts 1967, 60th Leg., p. 679, ch. 283; Acts 1977, 65th Leg., p. 662, ch. 248.
Wilbarger County -----	Acts 1965, 59th Leg., p. 9, ch. 6, amended by Acts 1973, 63rd Leg., p. 6, ch. 5; Acts 1977, 65th Leg., p. 1303, ch. 513.
Wilson County Memorial -----	Acts 1977, 65th Leg., p. 1293, ch. 511.

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.

² West's Tex. Stats. & Codes '77 Supp.—17

[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 revenues 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

- 4495a. Application of Sunset Act [NEW].
- 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. 4495a. Application of Sunset Act

The Texas State Board of Medical Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1981.

[Added by Acts 1977, 65th Leg., p. 1839, ch. 735, § 2.049, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 4498c. State Rural Medical Education Board
[See Compact Edition, Volume 4 for text of 1]

Application of Sunset Act

Sec. 1a. The State Rural Medical Education Board is subject to the Texas Sunset Act,¹ but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1989 and of every 12th year after 1989 are reviewed.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 2 to 6]

Amount and Proportioning of Loans, Grants and Scholarships; Repayment; Credit for Rural Practice; Default

Sec. 7. Applicants who are granted loans, grants or scholarships by the Board shall receive an amount which may defray his or her tuition and other expenses in any reputable, accepted and accredited medical school or medical college or school listed by the World Health Organization, or a scholarship to any such medical college or school for a term not exceeding four (4) years, same to be paid at such time and in such manner as may be determined by the Board. The loans, grants and scholarships herein provided may be proportioned in any such manner as to pay to the medical school to which any applicant is admitted such funds as are required by that school, and the balance to be paid directly to the applicant; all of which shall be under such terms and conditions as may be provided under rules and regulations of the Board. The said loans, grants, or scholarships shall be based upon the condition that the full amount thereof shall be repaid to the State of Texas in cash in full with five percent interest from the date of each payment by the State on such loan, grant or scholarship or by satisfaction of other conditions of the Board or this Act. If the applicant practices his profession in a rural area as defined by this Act the Board is authorized and shall credit one fifth of the loan, grant or scholarship together with interest thereon to the applicant for each year of such practice as certified by the Board. At the end of the second full year of practice in a rural area as provided for herein, the applicant shall be privileged to pay off the balance of the loan, grant or scholarship as the case may be with accrued interest thereon, and upon such payment shall be relieved from further obligation under his contract. Should the applicant default under his contract at any time the full principal and accrued interest plus a penalty of 10% of the outstanding balance plus attorneys' fees as defined by said contract shall be due and owing to the State.

Priority for Texas Residents

Sec. 7A. Texas residents who attend a medical school within the United States shall have first

priority in the distribution of loan funds. Funds shall then be made available to Texas residents who attend a medical school outside the United States. A "Texas resident," as used in this Act, shall be a person who has actually resided in the State of Texas for two (2) years immediately prior to becoming an applicant hereunder.

[See Compact Edition, Volume 4 for text of 8 to 20]

[Amended by Acts 1977, 65th Leg., p. 130, ch. 60, §§ 1 and 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1853, ch. 735, § 2.154, eff. Aug. 29, 1977.]

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 licensee 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 ½. ABORTION

Article

4512.7. Right Not to Perform Abortions [NEW].

Art. 4512.7. Right Not to Perform Abortions

Personnel Not Required to Participate in Abortion Procedures

Sec. 1. A physician, nurse, staff member, or employee of a hospital or other health care facility who objects to performing or participating, directly or indirectly, in an abortion procedure may not be required to perform or participate, directly or indirectly, in an abortion procedure.

Private Hospitals Not Required to Make Facilities Available

Sec. 2. A private hospital or private health care facility may not be required to make its facilities available for the performance of an abortion unless a

physician determines that the life of the mother is immediately endangered.

Discrimination Prohibited

Sec. 3. A hospital or health care facility may not discriminate in any manner against a physician, nurse, staff member, or employee or against an applicant for such positions, who refuses to perform or participate in an abortion procedure. No physician, nurse, staff person, or employee shall be discriminated against for their willingness to participate in abortion procedures at other facilities. An educational institution may not discriminate against applicants for admission or employment as students, interns, or residents because of their attitudes concerning abortion.

Remedies

Sec. 4. A person whose rights under this Act are violated may sue a hospital, health care facility, or educational institution in district court in the county where the hospital, facility, or institution is located to enjoin further violations of this Act and for such affirmative relief as may be appropriate, including, but not limited to, admission or reinstatement of employment with back pay plus 10 percent interest, and any other relief necessary to ensure compliance with the provisions of this Act.

[Acts 1977, 65th Leg., p. 1870, ch. 745, §§ 1 to 4, eff. Aug. 29, 1977.]

CHAPTER SIX A. CHIROPRACTORS

Article

4512b(1). Peer Review [NEW].

4512b(2). Civil Immunity, Official Acts [NEW].

Art. 4512b. Practice of Chiropractic

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

Texas Board of Chiropractic Examiners Created; Personnel and Terms; Application of Sunset Act

Sec. 3.

[See Compact Edition, Volume 4 for text of 3(a) and (b)]

(c) The Texas Board of Chiropractic Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 4 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 creat-

ed 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 shall 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). The Board shall periodically determine to its satisfaction whether those applicants who hold National Board of Chiropractic Examiners certificates have been adequately examined. When the Board determines that those applicants have not been adequately examined, the Board shall require those applicants to be examined in accordance with other provisions of this Act.

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.

The Board may not establish examination requirements for a license in addition to the requirements provided in this section.

[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; Acts 1977, 65th Leg., p. 151, ch. 75, § 1, eff. April 25, 1977; Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.042, eff. Aug. 29, 1977.]

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.]

Art. 4512b(2). Civil Immunity, Official Acts

In the absence of fraud, conspiracy, or malice, no member of the Texas Board of Chiropractic Examiners, its employees, nor any witness called to testify by said board, nor any consultant or hearing officer appointed by said board shall be liable or subject to suit or suits for damages for alleged injury, wrong, loss, or damage allegedly caused by any of said persons for any investigation, report, recommendation, statement, evaluation, finding, order, or award made in the courts of any of said persons' performing assigned, designated, official or statutory duties. This immunity is enacted to relieve and protect the persons named from being harassed and threatened with legal action while attempting to perform official duties.

[Added by Acts 1977, 65th Leg., p. 606, ch. 217, § 1, eff. Aug. 29, 1977.]

Sections 2 and 3 of the 1977 Act provided:

"Sec. 2. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed."

"Sec. 3. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

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 and 4]

Application of Sunset Act

Sec. 4a. The Texas State Board of Examiners of Psychologists is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 5 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 intem-

perate 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

[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; Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.045, eff. Aug. 29, 1977.]

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 Health 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.]

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]

Creation of the Texas Board of Physical Therapy Examiners
Sec. 2.

[See Compact Edition, Volume 4 for text of
2(a) to (e)]

(f) The Texas Board of Physical Therapy Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 3
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 an 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; Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.043, eff. Aug. 29, 1977.]

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 psychother-

apist," 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.

Application of Sunset Act

Sec. 4a. The Texas State Board of Examiners in Social Psychotherapy is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

¹Article 5429k.

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 in 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 resi-

dence, 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 surpluses. 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; Acts 1977, 65th Leg., p. 1839, ch. 735, § 2.050, eff. Aug. 29, 1977.]

CHAPTER SEVEN. NURSES

Article

4513a. Application of Sunset Act [NEW].

Art. 4513a. Application of Sunset Act

The Board of Nurse Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1981.

[Added by Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.041, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 4518. Accreditation of Schools of Nursing and Educational Programs; Certification of Graduates; Examination by Board of Nurse Examiners and Requirement of Registration

Sec. 1. It shall be the duty of the Board of Nurse Examiners to prescribe and publish the minimum requirements and standards for a course of study in programs which prepare professional nurse practitioners. All other regulations necessary to conduct accredited schools of nursing and educational programs for the preparation of professional nurses shall be as prescribed by the Board, provided, however, that the minimum period of time that the Board may require shall be at least two (2) academic years and the maximum period of time shall not exceed four (4) calendar years. The Board shall accredit such schools of nursing and educational

programs as meet its requirements and shall deny or withdraw accreditation from schools of nursing and educational programs which fail to meet the prescribed course of study or other standards.

The Board shall give those persons and organizations affected by its orders or decisions under this Article reasonable notice thereof, not less than twenty (20) days, and an opportunity to appear and be heard with respect to same. The Board shall hear all protests or complaints from such persons and organizations affected by such rule, regulation or decision as to the inadequacy or unreasonableness of any rule, regulation or order promulgated or adopted by it, or the injustice of any order or decision by it. If any person or organization which shall be affected by such order or decision shall be dissatisfied with any regulation, rule or order by such Board, such person or organization shall have the right, within thirty (30) days from the date such order is entered, to bring an action against said Board in the District Court of Travis County, Texas, to have such regulation, rule or order vacated or modified, and shall set forth in a petition therefor the principal grounds of objection to any or all of such rules, regulations or orders. Such appeal as herein provided shall be de novo as that term is known and understood in appeals from the Justice Court to the County Court.

[See Compact Edition, Volume 4 for text of 2 to 6]

[Amended by Acts 1977, 65th Leg., p. 1755, ch. 703, § 1, eff. Aug. 29, 1977.]

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."

Art. 4528b. Tuberculosis Nurses

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

Application of Sunset Act

Sec. 1a. The Board of Tuberculosis Nurses Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

[See Compact Edition, Volume 4 for Text of 2 to 9]

[Amended by Acts 1977, 65th Leg., p. 1837, ch. 735, § 2.037, eff. Aug. 29, 1977.]

Art. 4528c. Licensed Vocational Nurses

[See Compact Edition, Volume 4 for text of 1 to 3]

Term of Office, Organization, Meetings of Board; Application of Sunset Act

Sec. 4.

[See Compact Edition, Volume 4 for text of 4(a) to (d)]

(e) The Board of Vocational Nurse Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 4 ½ to 14]

[Amended by Acts 1977, 65th Leg., p. 1837, ch. 735, § 2.038, eff. Aug. 29, 1977.]

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]

Application of Sunset Act

Sec. 1a. The State Board of Pharmacy is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 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 Seventy-five Dollars (\$75) 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 8]

Fees

Sec. 9. (a) Every person desiring to practice pharmacy in the State of Texas shall be required to pass the examination given by the State Board of Pharmacy. The applicant shall make application by presenting to the secretary of the Board, on forms furnished by the Board, satisfactory sworn evidence that he has attained the age of twenty-one (21) years, is of good moral character, is a citizen of the United States, and has at least graduated from a first grade high school, or has a preliminary education equivalent thereto, permitting matriculation in The University of Texas, and that he has attended and graduated from a reputable university, school, or college of pharmacy which meets with the requirements of the Board, and shall have had at least one thousand (1,000) hours of practical experience in a retail pharmacy under the direct supervision of a registered pharmacist as follows: the applicant shall

have been actually employed substantially all of one (1) year in such capacity, provided that part time employment of not more than forty (40) hours per week gained in a maximum of eight (8) hour days may be credited toward the minimum practical experience to fulfill this requirement. If the applicant does not actually work substantially all of one (1) year in any calendar year period, the time actually worked may be added to work he may perform during the following year or years in order to fulfill one thousand (1,000) hours of practical experience. A university, school, or college of pharmacy is reputable whose entrance requirements and course of instruction are as high as those adopted by recognized universities, schools, or colleges of pharmacy, and whose course of instruction shall be the equivalent of not less than four (4) terms of eight (8) months each, and approved by the Board.

(b) The examination shall consist of written, oral, and/or practical tests in pharmacy, chemistry, pharmaceutical jurisprudence, posology, toxicology, bacteriology, physiology, pharmacognosy, and pharmacology, and in such other subjects as may be regularly taught in all recognized universities, schools, and colleges of pharmacy.

(c) Each applicant for license to practice pharmacy in Texas shall be given due notice of the time and place of examination. All examinations shall be conducted in writing and by such other means as the State Board of Pharmacy shall deem adequate to ascertain the qualifications of applicants, and in such manner as shall be entirely fair and impartial to all individuals in every recognized school of pharmacy. All applicants examined at the same time shall be given the same regular examinations, and each applicant successfully passing the examination and meeting all requirements of the State Board of Pharmacy shall be registered by the Board as possessing the qualifications required by this law, and shall receive from said Board a license to practice pharmacy in this State. Provided that the State Board of Pharmacy may, in its discretion, upon the payment of an amount, not to exceed Two Hundred Fifty Dollars (\$250), set by the Board, grant a license to practice pharmacy to persons who furnish proof that they have been registered as such in some other state or territory, and that they are of good moral character, provided that such other Board in its examination required the same general degree of fitness required by this State, and grants the same reciprocal privileges to pharmacists of this State.

(d) No person who is a member of the Communist Party, or who is affiliated with such party, or who believes in, supports, or is a member of any group or organization that believes in, furthers, or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods, shall be authorized to practice pharmacy in the State

of Texas, or to receive a license to practice pharmacy in the State of Texas.

(e) Every person admitted to practice pharmacy in the State of Texas shall, before receiving his license, make oath that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in and is neither a member of nor supports any group or organization that believes in, furthers, or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods.

(f) Any person who shall falsely make the affidavit prescribed in the foregoing paragraph shall be deemed guilty of fraudulent and dishonorable conduct, and malpractice, and shall be subject to all penalties which may be prescribed for making false affidavit.

[See Compact Edition, Volume 4 for text of 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; Acts 1977, 65th Leg., p. 1837, ch. 735, § 2.040, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2108, ch. 844, § 1, eff. Aug. 29, 1977.]

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. Provided, however, that the name and business address of the distributor need not be so affixed if the distributor acts only as a wholesaler or supplier and does not repackage the drug or in any way modify the individual drug package or container or its contents as such was received from the manufacturer, repackager, or other distributor.

(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; Acts 1977, 65th Leg., p. 1225, ch. 473, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 Act repealed conflicting laws.

CHAPTER NINE. DENTISTRY

Article

4543a. Application of Sunset Act [NEW].

4547a. Aid to the Board [NEW].

4551c-1. Peer Review or Grievance Committees [NEW].

4551i. Civil Immunity—Peer Review, Judicial or Grievance Committees [NEW].

4551j. Civil Immunity, Official Acts [NEW].

Art. 4543a. Application of Sunset Act

The State Board of Dental Examiners is subject to the Texas Sunset Act;¹ and unless continued in

existence as provided by that Act the board is abolished effective September 1, 1981.

[Added by Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.047, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 4544. Examination for License to Practice Dentistry

It shall be the duty of the Board to examine all applicants for license to practice dentistry in this State; and the Board shall examine and grade all papers submitted by such applicants and report to such applicants within a reasonable time after the date of such examination, and said report shall give to each applicant the grades made by said applicant upon each and every subject which he or she was examined by said Board. Each person applying for an examination shall pay to said Board a fee of One Hundred Dollars (\$100) and shall be granted a license to practice dentistry in this State upon his satisfactorily passing an examination given by said Board on subjects and operations pertaining to dentistry which shall include Anatomy, Physiology, Anaesthesia, Biochemistry, Dental Materials, Diagnosis, Treatment Planning, Ethics, Jurisprudence, Hygiene, Pharmacology, Operative Dentistry, Oral Surgery, Orthodontia, Periodontia, Prosthetic Dentistry, Pathology, Microbiology, and such other subjects as are regularly taught in reputable Dental Schools as the Board may in its discretion require. The examination shall be given either orally or in writing, or by giving a practical demonstration of the applicant's skill, or by any combination of such methods or subjects as the Board may in its discretion require. The Texas State Board of Dental Examiners may provide in its rules and regulations the procedures, fees, and requirements for graduates of foreign and/or nonaccredited Dental Schools to become licensed to practice dentistry in Texas. [Amended by Acts 1977, 65th Leg., p. 356, ch. 174, § 4, eff. Aug. 29, 1977.]

Arts. 4546, 4546a. Repealed by Acts 1977, 65th Leg., p. 616, ch. 225 § 4, eff. Aug. 29, 1977

Art. 4547a. Aid to the Board

The Texas State Board of Dental Examiners shall have power and authority to appoint such clerks, advisors, consultants, hygienists, and/or examiners to aid the board to carry out its duties as it deems necessary and advisable and may reimburse said persons so appointed in such amounts as is reasonable and in conformity with the provisions of the general appropriations bill as enacted by the Texas Legislature.

[Added by Acts 1977, 65th Leg., p. 969, ch. 365, § 1, eff. Aug. 29, 1977.]

Art. 4548e. Use of Own Proper Name Instead of Corporate or Trade Name; Practice as Partnership

It shall be unlawful for any person or persons to practice dentistry in this State under the name of a corporation, company, association, or trade name; or under any name except his own proper name, which shall be the name used in his license as issued by the State Board of Dental Examiners. It shall be unlawful for any person or persons to operate, manage, or be employed in any room, rooms, office, or offices where dental service is rendered or contracted for under the name of a corporation, company, association, or trade name, or in any other name than that of the legally qualified dentist or dentists actually engaged in the practice of dentistry in such room, rooms, office, or offices; provided, however, this shall not prevent two or more legally qualified dentists from practicing dentistry in the same offices as a firm, partnership, or as associates in their own names as stated in licenses issued to them. Provided, however, that any dentist practicing under his own license may be employed by any person, firm or partnership practicing dentistry under licenses issued to them. Each day of violation of this Article shall constitute a separate offense. This prohibition shall not prohibit a dentist or dentists from incorporating their dental practice in accordance with the Texas Professional Corporation Act (Article 1528e, Vernon's Texas Civil Statutes), where such corporate practice complies with the rules and regulations of the State Board of Dental Examiners governing such corporate practice.

[Amended by Acts 1977, 65th Leg., p. 1165, ch. 444, § 2, eff. Aug. 29, 1977.]

Art. 4549. Refusing Examination or License; Revocation of License

The Texas State Board of Dental Examiners shall have authority to refuse to examine any person or refuse to issue a license to any person for any one or more of the following causes:

(a) Proof of presentation to the Board of any dishonest or fake evidence of qualification, or being guilty of any illegality, fraud or deception in the process of examination, or for the purpose of securing a license.

(b) Proof of chronic or habitual intoxication or addiction to drugs on the part of the applicant.

(c) Proof that the applicant has been guilty of dishonest or illegal practices in or connected with the practice of dentistry.

(d) Proof of conviction of the applicant of a felony involving moral turpitude under the laws of this State or any other State or of the United States.

The Texas State Board of Dental Examiners and the District Courts of this State shall have concurrent jurisdiction and authority, after notice and hearing as hereinafter provided, to suspend or revoke a dental license for any one or more of the following causes:

(a) Proof of insanity of the holder of a license, as adjudged by the regularly constituted authorities.

(b) Proof of conviction of the holder of a license of a felony involving moral turpitude under the laws of this State or any other State or of the United States.

(c) That the holder thereof has been or is guilty of dishonorable conduct, malpractice or gross incompetency in the practice of dentistry.

(d) That the holder thereof has been or is guilty of any deception or misrepresentation for the purpose of soliciting or obtaining patronage.

(e) That the holder thereof procured a license through fraud or misrepresentation.

(f) That the holder thereof is addicted to habitual intoxication or the use of drugs.

(g) That the holder thereof employs or permits or has employed or permitted persons to practice dentistry in the office or offices under his control or management, who were not licensed to practice dentistry.

(h) That the holder thereof has failed to use proper diligence in the conduct of his practice or to safeguard his patients against avoidable infections.

(i) That the holder thereof has failed or refused to comply with any of the provisions of this Act.

(j) That the holder thereof has failed or refused to comply with the adopted and promulgated rules and regulations of the Board.

(k) That the holder thereof is physically or mentally incapable of practicing dentistry legally or with safety to dental patients.

(l) That the holder thereof has been negligent in the performance of dental services which injured or damaged dental patients.

Proceedings to suspend or revoke a dental license on account of any one or more of the causes set forth in this Article shall be taken as follows:

(a) Proceedings before the Texas State Board of Dental Examiners shall be as follows:

All complaints to be considered by the Board shall be made in writing, subscribed and sworn to by the person presenting such complaint, which complaint shall set out the alleged violations of such Statutes and declaring it to be the opinion of the person presenting such complaint that the person

or persons so accused have so violated said Statutes.

All complaints as received shall be presented to the Secretary of the Board or an authorized employee of the Board who shall cause copies of all complaints to be made and mailed or delivered to each member of the Board. When a complaint is made by a member of the Board, its agents or employees, the Secretary of the Board shall cause such complaint to be docketed on its records in the name of the Texas State Board of Dental Examiners versus the person against whom such complaint has been made, and shall mail a copy of such docketed complaint by registered mail to the accused person under the jurisdiction of the Texas State Board of Dental Examiners charged with having violated such Statutes. When a complaint is made by others than the members of the Board, its agents or employees, the Board or its duly authorized representative shall cause an investigation of such complaint to be made to determine the facts in such case, and if the facts as determined by such investigation, in the discretion of the Secretary of the Board, justify the docketing of such complaint for hearing before the Board, then the Secretary of the Board shall cause such complaint to be docketed on its records in the name of the Texas State Board of Dental Examiners versus the person against whom such complaint has been made, and shall mail a copy of such docketed complaint by registered mail to the accused person under the jurisdiction of the Texas State Board of Dental Examiners charged with having violated such Statutes.

The Secretary of the Board or its authorized officer or employee shall not less than ten (10) days prior to the next meeting of the Board called for the purpose of hearing and considering such complaint, mail by registered mail to the last known address of such person or persons against whom a complaint has been so docketed a notice of hearing, which notice shall contain the date, time, and place of the meeting of the Texas State Board of Dental Examiners called to consider such complaint, and such notice shall contain the alleged violations of such Statutes, and shall state that such accused person may appear and offer such evidence as is pertinent to his defense to such complaint. Such hearing shall be governed by such rules and regulations as may be prescribed by the Board, and the Board shall have the authority to subpoena and compel

the attendance of such licensees or other persons deemed to have knowledge which would aid the Board in reaching a proper decision and for the enforcement of this Act. After such hearing, the Board shall enter an order in its minutes, as in the opinion of the majority of the Board the facts brought out at such hearing justify and require. Provided, however, that any order revoking or suspending such license or licenses shall be signed by a majority of such Board and by all the members of such Board present at such hearing.

If said Board shall make and enter any order revoking or suspending any license or licenses as hereinabove provided, the person or persons whose license shall have been so revoked or suspended may, within thirty (30) days after the making and entering of such order, take an appeal to the District Court of the County of the residence of the person or persons whose license shall have been so revoked or suspended, by filing an appropriate petition for such purpose. Said cause shall be placed on the docket of said Court in the name of the party or parties filing same, as plaintiff, and the Texas State Board of Dental Examiners, as defendants. It shall be the duty of said Board, upon the filing of a petition asking for an appeal and review of such proceedings of said Board by the person or persons accused, and after citation in such cause has been issued and served as in other civil cases, to prepare and transmit to such District Court upon notice from such Court a transcript of the orders hereinabove provided for, the same to be certified as true and correct by the Secretary of said Board. Such District Court shall thereafter and under the rules of procedure applicable to other civil cases, proceed to set such cause for hearing as in other civil cases. Upon the hearing of such cause, if such Court shall find that the action of such Board, in revoking or suspending such license or licenses is not well taken, such Court shall by appropriate order and judgment set aside such action of said Board; but if such Court or jury shall sustain such action of said Board in revoking or suspending such license or licenses an order shall be made and entered in appropriate form sustaining and affirming the action of such Board; provided, however, that the person or persons whose license shall have been so revoked or suspended may waive the impanelling of a jury, from which order an appeal may be taken to the Court of Civil Appeals, as in other civil causes.

(b) Proceedings before the District Courts of this State shall be as follows:

It shall be the duty of the several District and County Attorneys of this State, on the request of any member of the Texas State Board of Dental Examiners or by complaint presented to any District Court of the State or county in which such alleged offense occurred, to file and prosecute appropriate judicial proceedings in the name of the State against the person or persons alleged to have so violated such Statute. Such complaint shall be made in writing and filed in the District Court of the State or county in which the alleged offense occurred, and such complaint shall distinctly set forth the charges and grounds thereof and shall be subscribed and sworn to. When such complaint is made by any County or District Attorney, as herein provided, it shall be subscribed and sworn to by the prosecutor and shall be filed with the Clerk of the Court. The Court, upon the filing of said complaint, shall order the accused dentist to show cause why his license to practice dentistry in this State shall not be suspended or revoked.

Citation therein shall be issued in the name of the State of Texas and in manner and form as in other cases and the same shall be served upon the defendant at least ten (10) days before the trial date set therein. Upon the return of said citation executed, if the defendant shall appear and deny the charge, the cause shall be docketed for trial and conducted in the name of the State of Texas against the defendant. A jury of twelve (12) men shall be summoned as in cases during term time of the Court when no regular jury is available and as prescribed by law and shall be impanelled unless waived by the defendant, and the cause shall be tried in like manner as in other civil cases. If the said accused dentist be found guilty or shall fail to appear and deny the charge after being cited as aforesaid, the Court may by proper order entered on the minutes, suspend his license for a time or revoke and cancel it entirely and may also give proper judgment of costs, from which order an appeal may be taken to the Court of Civil Appeals as in other civil cases.

[Amended by Acts 1977, 65th Leg., p. 799, ch. 296, § 1, eff. May 28, 1977.]

Sections 2 and 3 of the 1977 amendatory act provided:

"Sec. 2. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed."

"Sec. 3. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for

any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

Art. 4550. Records of the Board

The Board shall keep records in which shall be registered the name and residence or place of business of all persons authorized under this law to practice dentistry, dental hygiene and such other professions or businesses under its jurisdiction as provided by law. All of the records and files of the Texas State Board of Dental Examiners shall be public records and open to inspection at reasonable times, except the investigation files and records which shall be confidential and their contents may not be forced to be divulged until after the investigation is complete or has been inactive for 60 days at which time this exception expires and the records open to inspection.

[Amended by Acts 1977, 65th Leg., p. 1165, ch. 444, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 amendatory act amended art. 4548e; §§ 3 and 4 thereof provided:

"Sec. 3. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed."

"Sec. 4. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

Art. 4550a. Application, Registration Fund, and Secretary or Director

1. It shall be the duty of all persons now lawfully qualified and engaged in the practice of dentistry in this State, or who shall hereafter be licensed for such practice by the State Board of Dental Examiners, to annually apply and to be registered as such practitioners with the State Board of Dental Examiners on or before March 1st of each calendar year. Each person so registering shall pay in connection with such annual registration for the receipt hereinafter provided for, a fee of not less than Twelve Dollars (\$12) nor more than Seventy-Five Dollars (\$75) as determined by said Board according to the needs of said Board, such payment to be made by each licensee to such Board, and every person so registering shall file with said Board a written application setting forth such facts as the Board may require. Upon receipt of such applications, accompanied by such fees, said Board, after ascertaining either from its records or other sources deemed by it to be reliable, that the applicant is a duly licensed practitioner of dentistry in this State, shall issue to the applicant an annual registration certificate or receipt certifying that he has filed such application and has paid the required fee; provided, that the filing of such application, the payment of such fee, and the issuance of such receipt therefor, shall not entitle the holder thereof to lawfully practice dentistry within the State of Texas unless he has in fact been previously licensed as such practitioner by the

State Board of Dental Examiners, as provided by this law, and unless said license is in full force and effect; and provided further, that in any prosecution for the unlawful practice of dentistry such receipt showing payment of the annual registration fee required by this chapter shall not be treated as evidence that the holder thereof is lawfully entitled to practice dentistry.

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

4. To aid the Board in performing the duties prescribed in this Section, the Board is hereby authorized to employ an Executive Secretary or Director who shall receive a salary to be fixed by the Board, and who shall make and file a surety bond in a sum not less than Five Thousand Dollars (\$5,000) conditioned for the faithful performance of all the duties of his office and the safekeeping and proper disbursement of said "Dental Registration Fund" and all other funds coming into his hands; such salary shall be paid out of said "Dental Registration Fund" and shall not be in any way a charge upon the general revenue of the State. Said Board shall employ and provide such other employees as may be needed to assist the Executive Secretary or Director in performing his duties and in carrying out the purposes of this Act, provided that their compensation shall be paid only out of the said "Dental Registration Fund." All disbursements from "Dental Registration Fund" shall be made only upon the written approval of the President and Secretary of said Board and upon warrants drawn by the Comptroller to be paid out of said fund.

[Amended by Acts 1977, 65th Leg., p. 353, ch. 174, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 amendatory act amended §§ 5 and 6 of art. 4551e; § 3 amended art. 4551; § 4 amended art. 4544; §§ 5 and 6 thereof provided: "Sec. 5. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed."

"Sec. 6. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

Art. 4551. Fees and Expenses

Each member of the State Board of Dental Examiners, also known and referred to as the Texas State Board of Dental Examiners, shall receive for his service Seventy-five Dollars (\$75) per day for each day he is actually engaged in the duties of his office together with all legitimate expenses incurred in the performance of such duties. All per diem and expenses accruing hereunder shall be paid from moneys received by said Board from the "Dental Registration Fund" as provided in this law; no money shall ever be paid to any member of the Board from the General Fund.

[Amended by Acts 1977, 65th Leg., p. 356, ch. 174, § 3, eff. Aug. 29, 1977.]

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.

(8) Who shall offer or undertake or cause another to do, directly or indirectly, for any person any act, service, or work in the practice of dentistry or any part thereof as provided for in the laws of Texas relating to the practice of dentistry including without limitation the inducing, administering, prescribing, or dispensing any anesthesia, anesthetic drug, medicine, or agent in anywise incidental to or in connection with the practice of dentistry; or who permits or allows another to use his license or certificate to practice dentistry in this state for the purpose of performing any act described in this Article; or who shall aid or abet, directly or indirectly, the practice of dentistry by any person not duly licensed to practice dentistry by the Texas Board of Dental Examiners.

[Amended by Acts 1975, 64th Leg., p. 1836, ch. 566, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1955, ch. 778, § 1, eff. Aug. 29, 1977.]

Sections 2 and 3 of the 1977 amendatory act provided:

"Sec. 2. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed."

"Sec. 3. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

Art. 4551a-1. Repealed by Acts 1975, 64th Leg., p. 1837, ch. 566, § 2, eff. June 19, 1975

See, now, art. 4551a.

Art. 4551b-1. Repealed by Acts 1977, 65th Leg., p. 616, ch. 225, § 4, eff. Aug. 29, 1977

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."

Art. 4551e. Dental Hygienists; Regulation and Licensing

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

Qualifications

Sec. 2. A dental hygienist shall be not less than eighteen (18) years of age, a citizen of the United States of America, a graduate of an accredited high school or hold a certificate of high school equivalency (GED) and be a graduate of a recognized and accredited school or college of dentistry or dental

hygiene approved by the Texas State Board of Dental Examiners in which the course of instruction shall be the equivalent of not less than two (2) terms of eight (8) months each and who shall have thereafter passed an examination given by and before the Texas State Board of Dental Examiners on subjects pertaining to dental hygiene, and who shall have complied with all of the provisions of this Act and the rules and regulations promulgated by the Texas State Board of Dental Examiners.

Supervision

Sec. 3. All work performed by a dental hygienist in the practice of dental hygiene, as defined in this Act, shall be performed in the dental office of a dentist or dentists legally engaged in the practice of dentistry in this state, by whom he or she must be employed, except where employed by schools, hospitals, state institutions, or public health clinics approved by the Texas State Board of Dental Examiners. It shall be unlawful for more than two dental hygienists to practice dental hygiene for one dentist at any one time, and it shall be unlawful for a dentist legally engaged in the practice of dentistry in this state to employ, under any contractual relationship whatsoever, more than two dental hygienists to practice dental hygiene at any one time.

[See Compact Edition, Volume 4 for text of 4]

Dental Hygiene Advisory Committee

Sec. 4A. (a) The Dental Hygiene Advisory Committee is hereby established.

(b) The Dental Hygiene Advisory Committee shall consist of not more than six dental hygienists appointed by the Texas State Board of Dental Examiners. A member of such advisory committee shall serve for a term of one year expiring on May 1 of each year.

(c) The advisory committee shall advise the Texas State Board of Dental Examiners on matters relating to dental hygiene.

Examination

Sec. 5. The Texas State Board of Dental Examiners shall hold meetings at such times and places as the Board shall designate for the purpose of examining qualified applicants for certification as dental hygienists in this State. All applicants for examination shall pay a fee of not less than \$25 nor more than \$70 to said Board as determined by said Board according to its needs and shall apply upon forms furnished by the Board and shall furnish such other information as the Board may in its discretion require to determine any applicant's qualifications. The Board shall have authority to employ the services of such examiners and clerks as may be needed to aid the Board in the performance of such duties. The examination shall be taken by all applicants on

such subjects and operations pertaining to dentistry and dental hygiene which shall include Dental Anatomy, Pharmacology, X-Ray, Ethics, Jurisprudence, and Hygiene, and such other subjects as are regularly taught in reputable schools of dentistry and dental hygiene, as the Board in its discretion may require. The examination shall be given orally or in writing, or by giving a practical demonstration of the applicant's skill or by any combination of such methods or subjects as the Board may in its discretion require. The Board shall grade each applicant upon the various phases of the examination and shall report such grades to the applicant within a reasonable time after such examination, and each applicant who has satisfactorily passed all phases of the examination as determined by the Board shall be entitled to and shall be issued a certificate permitting such applicant to practice dental hygiene in the State of Texas as is defined and regulated by the law of this State.

Renewal of Certificate, Fee

Sec. 6. It shall be the duty of each dental hygienist in this State to annually apply to the Texas State Board of Dental Examiners for renewal of his certificate granted him by said Board, and to pay, in the manner and within the time prescribed by the Board in its rules and regulations in connection with such application for renewal, a fee of not less than Ten Dollars (\$10) nor more than Fifty Dollars (\$50) as determined by said Board according to its needs. Upon the payment of such fee as prescribed by the Board, each dental hygienist shall receive a renewal of his certificate as a receipt for such payment, and the absence of such renewed certificate shall be prima facie evidence of the want of possession of such certificate before the Board and in any court in the State.

Dental hygienists, required to register under this Act, who fail or refuse to register and pay the annual registration fee in the manner and within the time prescribed shall not thereafter practice dental hygiene in this State, and during such time of said person's failure or refusal to register and renew his certificate and to pay the required fee, he shall be subject to the same penalties imposed by law upon any person unlawfully practicing dental hygiene. Such person may, in the discretion of the Board in each instance, be reinstated and permitted to register and renew his certificate within three years upon written application to such Board. Such application shall contain all facts and information which the Board may require and must be accompanied by the payment of all annual registration fees in arrears together with an additional fee of Five Dollars (\$5). Any certificate issued by the Texas State Board of Dental Examiners shall be subject to cancellation for failure to pay all annual registration fees required by law where such certificate holder shall have

failed to register and pay such fees for three consecutive years. A revocation to be valid for failure to pay such fees shall be based upon written notice to such person at his last known address not less than 90 days prior to the date of hearing and intended cancellation, if not so paid. Upon such cancellation the Board, in its discretion in each instance, may reinstate such person's certificate upon an affirmative showing by such person that he or she has the degree of professional skill and knowledge currently required of such certificate holders, and that such person is not mentally or physically incompetent and has not been guilty of any immoral or unprofessional conduct. However, the requirements governing the payment of the annual registration fees and penalties for late registration shall not apply to certificate holders who are on active duty with the Armed Forces of the United States of America and are not engaged in private or civilian practice.

[See Compact Edition, Volume 4 for text of 7 to 20]

[Amended by Acts 1977, 65th Leg., p. 355, ch. 174, § 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 615, ch. 225, §§ 2, 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 970, ch. 365, § 2, eff. Aug. 29, 1977.]

Art. 4551g-1. Repealed by Acts 1977, 65th Leg., p. 616, ch. 225, § 4, eff. Aug. 29, 1977

Art. 4551h. Narcotic Drugs, Dangerous Drugs, Controlled Substances

It shall be unlawful for a dentist to prescribe, provide, obtain, order, administer, give, or deliver to or for any person, narcotic drugs, dangerous drugs or any controlled substances not necessary or required, or where the use or possession of same would promote or further addiction thereto, or to aid, abet, or cause any of same to be done in any manner. For purposes of this article the terms narcotic drugs, dangerous drugs, and controlled substances shall mean those defined or recognized as such by any law of the State of Texas or of the United States. [Amended by Acts 1977, 65th Leg., p. 615, ch. 225, § 1, eff. Aug. 29, 1977.]

Sections 2 and 3 of the 1977 amendatory act amended §§ 2 and 3 of art. 4551e; § 4 repealed arts. 4546, 4546a, 4551b-1, and 4551g-1; §§ 5 and 6 thereof provided:

"Sec. 5. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed."

"Sec. 6. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

Art. 4551i. Civil Immunity—Peer Review, Judicial or Grievance Committees

In the absence of fraud, conspiracy, or malice, the elected members of the dental peer review, judicial or grievance committees of a dental society or association which has not less than 75 percent of the licensed dentists in such area as members, shall not

be subject to suit or suits for damages for alleged injury, wrong, loss, or damage for and while performing duties of investigating disagreements or complaints, holding hearings to determine facts, or in making evaluations, recommendations, decisions, or awards involving dentists, dental patients and/or third parties. The Texas State Board of Dental Examiners shall determine the various areas and shall certify the percentage requirements from its records of the dental licensees in such area or areas. This immunity is enacted to relieve and protect the persons named herein from being harassed and threatened with legal action while attempting to perform required duties.

[Added by Acts 1977, 65th Leg., p. 1150, ch. 436, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 Act added art. 4551j; §§ 3 and 4 thereof provided:

"Sec. 3. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed."

"Sec. 4. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

Art. 4551j. Civil Immunity, Official Acts

In the absence of fraud, conspiracy, or malice, no member of the Texas State Board of Dental Examiners, its employees, nor any witness called to testify by said board, nor any consultant or hearing officer appointed by said board shall be liable or subject to suit or suits for damages for alleged injury, wrong, loss, or damage allegedly caused by any of said persons for any investigation, report, recommendation, statement, evaluation, finding, order, or award made in the course of any of said persons performing assigned, designated, official, or statutory duties. This immunity is enacted to relieve and protect the persons named from being harassed and threatened with legal action while attempting to perform official duties.

[Added by Acts 1977, 65th Leg., p. 1151, ch. 436, § 2, eff. Aug. 29, 1977.]

CHAPTER TEN. OPTOMETRY

ARTICLE 2. TEXAS OPTOMETRY BOARD

Article

4552-2.01a. Application of Sunset Act [NEW].

ARTICLE 4. LICENSES—RENEWAL, REVOCATION, ETC.
4552-4.01B. Educational Requirement for Renewal [NEW].

ARTICLE 2. TEXAS OPTOMETRY BOARD

Art. 4552-2.01a. Application of Sunset Act

The Texas Optometry Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981. [Added by Acts 1977, 65th Leg., p. 1837, ch. 735, § 2.039, eff. Aug. 29, 1977.]

¹ Article 5429k.

ARTICLE 4. LICENSES—RENEWAL, REVOCATION, ETC.

Art. 4552-4.01. Annual Renewal

(a) On or before January 1 of each year, every licensed optometrist in this state shall pay to the secretary-treasurer of the board an annual renewal fee for the renewal of his license to practice optometry for the current year. The amount of the fee shall be as determined by the board, not to exceed \$75.

[See Compact Edition, Volume 4 for text of (b) to (e)]

[Amended by Acts 1977, 65th Leg., p. 199, ch. 98, § 1, eff. Aug. 29, 1977.]

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.]

CHAPTER TEN A. HEARING AIDS

Art. 4566-1.02. Board of Examiners

[See Compact Edition, Volume 4 for text of (a) to (e)]

(f) The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

[Amended by Acts 1977, 65th Leg., p. 1836, ch. 735, § 2.028, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 4566-1.12. Fees and Expenses

[See Compact Edition, Volume 4 for text of (a) to (e)]

(f) Each member of the Board is entitled to a per diem of \$30 for each day he is engaged in performing the duties of his office. The travel expenses allowance for members of the Board and its employees shall be provided in the General Appropriations Act. The executive director of the Board shall be allowed his actual expenses incurred while traveling on official business for the Board.

[See Compact Edition, Volume 4 for text of (g) to (i)]

[Amended by Acts 1977, 65th Leg., p. 1750, ch. 699, § 1, eff. Aug. 29, 1977.]

Art. 4566-1.13. Renewal of License

(a) On or before the first day of January, 1972, every licensee under this Act shall pay to the Secretary-Treasurer of the Board an annual renewal fee of \$67.50 for the renewal of his license to fit and dispense hearing aids for the year 1972. On or before the first day of January, 1973, and every year thereafter, every licensee under this Act shall pay to the Secretary-Treasurer of the Board an annual renewal fee of \$125.00 for renewal of his license to fit and dispense hearing aids for the current year. On receipt of said renewal fee, the Board shall issue an annual renewal certificate bearing the number of his license, the year for which it is renewed, and such other information from the records of the Board as the Board may deem necessary for the proper enforcement of this Act.

[See Compact Edition, Volume 4 for text of (b) to (e)]

[Amended by Acts 1977, 65th Leg., p. 1750, ch. 699, § 2, eff. Aug. 29, 1977.]

CHAPTER ELEVEN. PODIATRY

Article

4568b. Application of Sunset Act [NEW].

Art. 4568b. Application of Sunset Act

The Texas State Board of Podiatry Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1981.

[Added by Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.044, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 4571. Licenses

Annual License Renewal

Sec. 1. (a) The Texas State Board of Podiatry Examiners shall set and may from time to time change the amount of the annual license renewal fee as in the Board's judgment may be needed to provide for the reasonable costs and expenses of the Board in performing its duties and administering this Act, but such annual license renewal fee shall not exceed Fifty Dollars (\$50). The annual license renewal fee shall be paid to the Secretary-Treasurer of the Board.

(b) The Secretary-Treasurer of the Texas State Board of Podiatry Examiners on or before August first of each year shall notify, by mail, all Texas licensed podiatrists at their last known address that the annual license renewal fee is due on the following September first.

(c) If the annual license renewal fee is not paid on or before the following December first, the delinquent licensee shall be notified by mail at his last known address by the Secretary-Treasurer that such fee is due and unpaid and a delinquent penalty of Twenty Dollars (\$20) is assessed and shall be paid on or before the following January first. If such fees are not paid by January first, it shall be the duty of the Texas State Board of Podiatry Examiners to suspend or revoke the license for nonpayment of the annual license renewal and delinquent fees for the current year.

(d) The Board by rule may adopt a system under which licenses expire on various dates during the year, and the dates for sending notice that payment is due and dates of suspension, revocation, and assessment of a penalty for nonpayment shall be adjusted accordingly. For the year in which the license renewal date is changed, license fees payable on September 1 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 renewal fee is payable.

Effect of Practicing Without Renewing License

Sec. 2. Practicing podiatry without an annual renewal certificate for the current year, as provided herein, shall have the same force and effect and be subject to all penalties of practicing podiatry without a license.

Re-Examination If License Revoked

Sec. 3. After the Board has declared a license suspended or revoked for nonpayment of the annual license renewal fee as provided for in this Article, the Board may thereafter in its discretion refuse to reinstate the license or issue a new license until the podiatrist, whose license has been declared suspended or revoked has passed the regular examination for license.

Reissuance of Lost or Amended License

Sec. 4. If any license issued by the Board is lost, destroyed or stolen from the legally qualified and authorized person to whom it was issued, the owner of the license shall report the fact to the Secretary-Treasurer of the Board, in an affidavit form. The affidavit shall set forth detailed information as to the loss, destruction or theft, giving dates, place and circumstances. If the owner of a license desires to have an amended license issued to him because of a lawful change in the name or degree designation of the licensee or for any other lawful and sufficient reason, the owner of the license shall make application for such amended license to the Secretary-Treasurer of the Board setting forth the reasons the issuance of an amended license is requested. A duplicate or amended license shall be issued upon regular application of the owner of the original license and payment of a fee set by the Board for the duplicate or amended license; however, the Board shall not issue a duplicate or amended license until sufficient evidence by the owner of the original license has been submitted to prove the license has been lost or to establish the lawful reason an amended license should be issued, and unless the records of the Board show a license had been issued and been in full force and effect at the time of such loss, destruction or theft, or such request for an amended license. If an amended license is issued, the original license shall be returned to the Board.

Display of License

Sec. 5. Every person licensed by the State Board of Podiatry Examiners to practice in the state shall conspicuously display both his license and an annual renewal certificate for the current year of practice in the place or office wherein he practices and shall be required to exhibit such license and renewal certificate to a representative of the Board upon such representative's official request for its examination or inspection.

Renewal After Military Service

Sec. 6. Any licensed podiatrist whose license has been suspended or revoked or whose annual renewal

certificate has expired while he has been engaged in Federal service or on active duty with the Army of the United States, the United States Navy, the United States Marine Corps, the United States Coast Guard, the United States Air Force, or the United States Maritime Service or the State Militia, called into service or training of the United States of America or in training or education under the supervision of the United States preliminary to induction into the military service, may have his license renewed without paying any lapsed renewal fee or without passing any examination, if, within one (1) year after termination of said service, training or education, other than by dishonorable discharge, he furnishes the State Board of Podiatry Examiners an affidavit to the effect that he has been so engaged and that his service, training or education has been so terminated.

[Amended by Acts 1977, 65th Leg., p. 1219, ch. 469, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 amendatory act repealed art. 4571a and § 3 thereof provided: "All laws or parts of laws in conflict with this Act are repealed to the extent of such conflict."

Art. 4571a. Repealed by Acts 1977, 65th Leg., p. 1221, ch. 469, § 2, eff. Aug. 29, 1977

See, now, § 1(d) of art. 4571.

Art. 4574. Compensation and Expenses

Each member of the board shall receive for his services fifty dollars a day and necessary traveling and incidental expenses, while actually engaged in the performance of his official duties; except that no board member may be paid the per diem expenses allowed by this article for more than fifty days in a calendar year. The secretary shall receive his necessary expenses for services actually performed for the board. All printing, postage and other contingent expenses, necessarily incurred in administering this law shall be paid from the fees received by the board, and all expenses shall be itemized, verified, audited and an account kept thereof by the secretary of the board, who shall pay the same out of the fees which accrue to the board.

[Amended by Acts 1977, 65th Leg., p. 137, ch. 66, § 1, eff. April 18, 1977.]

Per Diem Allowance

Acts 1967, 60th Leg., p. 181, ch. 96, § 5 [see Compact Edition, Volume 4], was repealed by Acts 1977, 65th Leg., p. 137, ch. 66, § 2.

CHAPTER TWELVE. EMBALMING

Art. 4582b. Funeral Directing and Embalming
[See Compact Edition, Volume 4 for text of I]

The Board

Sec. 2.

[See Compact Edition, Volume 4 for text of 2A to M]

N. The State Board of Morticians is subject to the Texas Sunset Act;¹ and unless continued in

existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1979.

¹ Article 5429k.

Licenses—Funeral Directors and Embalmers

Sec. 3.

[See Compact Edition, Volume 4 for text of A to G]

H. The State Board of Morticians is hereby authorized and empowered and it shall be its duty to conduct hearings to revoke, suspend, place on probation, or fine any licensed funeral director and/or embalmer, or apprentice and may refuse to admit persons to examination for any of the following reasons:

[See Compact Edition, Volume 4 for text of 3H1 to 15]

16. Whenever a licensee, apprentice, or any other person, whether employee, agent or representative, or one in any manner associated with a funeral establishment shall solicit business or offer any inducement, pecuniary or otherwise, for the purpose of securing or attempting to secure business for such funeral establishment, unless such solicitation is made pursuant to a permit issued under the provisions of Article 548b, Vernon's Texas Civil Statutes, or Senate Bill No. 129, Acts of the 58th Legislature, Regular Session, 1963.¹

[See Compact Edition, Volume 4 for text of 3H17 to I]

J. Any fine imposed by the State Board of Morticians under this Act shall be no less than Two Hundred Dollars (\$200) nor more than One Thousand Dollars (\$1,000) as determined by the Board. Any fines collected by the Board shall be deposited into the General Fund of the Treasurer of the State of Texas.

¹ Acts 1963, 58th Leg., p. 1304, ch. 496, amending art. 548b.

Funeral Establishments

Sec. 4.

[See Compact Edition, Volume 4 for text of 4A to C]

D. 1. The Board may initiate formal complaint or other action against a funeral establishment or in regard to the license of a funeral establishment only upon the following grounds:

[See Compact Edition, Volume 4 for text of 4D 1(a) to (e)]

2. As to asserted violations of provisions of this Section, the Board shall have the following powers, rights and duties:

[See Compact Edition, Volume 4 for text of 4D 2(a) and (b)]

(c) As to the licenses of funeral establishments, except when the accused admits a violation and agrees in writing to a judgment of the Board suspending or revoking the license in question or placing the accused on probation or fining the accused, the Board shall have no power or authority to fine the accused or suspend or revoke the license of the accused. However, the Board shall have the right to initiate a civil action in a District Court in the county in which the accused resides for the purpose of seeking a revocation or suspension of such license or probationary action or fine all as hereinafter provided.

If the Board shall be of the opinion that the license of the accused should be revoked or suspended for a period not to exceed three years, and if the accused will accept a decision of the Board to such effect, it shall prepare a formal judgment and submit the same to him; and upon his agreement to its entry, evidenced by memorandum in writing signed and acknowledged by him, the Board shall enter judgment accordingly and the same shall have the force and effect of a judgment of the District Court of the county of the residence of the accused. A copy of the judgment, together with a copy of the complaint, shall be mailed to the clerk of the District Court of the county of residence of the accused for entry in the minutes of the court.

(d) The term "Accusation" or "Complaint" shall embrace all complaints brought before the Board. By the terms "civil suit," "court action" or "formal complaint" is meant the pleading by which disciplinary action is instituted by the Board in a District Court of this state.

The Texas rules of civil procedure shall govern the procedure in all proceedings under Civil Actions (Formal Complaint).

The District Attorney or the County Attorney of the county of residence of the accused licensee as defendant, or the Attorney General or such counsel as the Board may designate shall represent the Board as it shall determine.

The formal complaint shall be the pleading by which the proceeding is instituted. The formal complaint shall be filed in the name of the Texas State Board of Morticians as plaintiff against the accused licensee as defendant and shall set forth the violation with which the defendant is charged. The prayer may be that the defendant "be placed on probation or his (its) license suspended or revoked or he (it) be fined as the facts shall warrant."

The answer of the defendant to the formal complaint shall either admit or deny each allegation of

the petition, except where the defendant is unable to admit or deny the allegation, in which case defendant shall set forth the reasons he (it) cannot admit or deny.

Proceedings under formal complaint shall be entitled to preferred setting at the request of either party.

If the court shall find from the evidence in a case tried without a jury, or from the verdict of the jury, if there be one, that the defendant is guilty of no violation, he shall enter judgment so declaring and dismiss the complaint; but if he shall find the defendant guilty, he shall determine whether the party shall be (a) placed under probation (in which case he shall specify the terms thereof), (b) the license suspended (in which case he shall fix the term of suspension), (c) the license revoked, or (d) fined (in which case he shall set the amount thereof); and he shall enter the judgment accordingly. If the judgment be one finding the defendant guilty as aforesaid, it shall direct transmittal of certified copies of the judgment and complaint to the Secretary of the Board of Morticians; and the latter shall make proper notation on the membership rolls.

At any time after the expiration of one year from the date of final judgment or revocation of a license, such party may petition the District Court of the county of his residence for reinstatement. Notice of such action shall be given to the Secretary of the State Board of Morticians.

The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Section. Said action for an injunction shall be in addition to any other action, proceeding, or remedy recognized by law. The Board shall be represented by counsel designated by it, or, by the Attorney General and/or County and District Attorney of this state.

Any fine imposed on the accused, whether by agreement with the Board or imposed through judicial proceedings shall be no less than Two Hundred Dollars (\$200) nor more than One Thousand Dollars (\$1,000). Any fines collected by the Board or by the court shall be deposited in the General Fund of the State of Texas.

[See Compact Edition, Volume 4 for text of 4 E to G]

[Amended by Acts 1977, 65th Leg., p. 859, ch. 324, §§ 1 to 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1834, ch. 735, § 2.013, eff. Aug. 29, 1977.]

CHAPTER THIRTEEN. ANATOMICAL BOARD

Article

- 4583a. Application of Sunset Act [NEW].
- 4590-4. Justice of the Peace or Medical Examiner; Permitting Removal of Corneal Tissue [NEW].
- 4590-5. Eye Enucleation for Anatomical Donations [NEW].

Art. 4583. Board and Duties

The professor of anatomy and the professor of surgery of each of the medical schools or colleges,

and two professors from each chiropractic school or college now incorporated, and of the several medical, chiropractic, and dental schools and colleges which may hereafter be incorporated in this State are constituted a board, to be known as the Anatomical Board of the State of Texas, for the distribution and delivery of dead human bodies, hereinafter described, to and among such institutions as, under the provisions of this law, are entitled thereto. The board shall have power to establish rules and regulations for its government, and to appoint and remove proper officers of such board, and shall keep full and complete minutes of its transactions. Records sufficient for identification shall also be kept, under its direction, of all bodies received and distributed by said board and of persons to whom the same may be distributed, which minutes and records shall be open at all times to the inspection of each member of said board and of any district attorney or county attorney of this State.

[Amended by Acts 1977, 65th Leg., p. 147, ch. 72, § 1, eff. April 25, 1977.]

Art. 4583a. Application of Sunset Act

The Anatomical Board of the State of Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1848, ch. 735, § 2.112, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 4585. Distribution of Bodies to Institutions

The board, or their duly authorized agents, may take and receive such bodies so delivered as aforesaid, and shall, upon receiving them, distribute and deliver them to and among the schools, colleges, physicians and surgeons aforesaid, including chiropractic colleges, in the manner following: Those bodies needed for lecture and demonstration in the said incorporated schools and colleges shall first be supplied; the remaining bodies shall then be distributed proportionately and equitably, the number assigned to each to be based upon the number of students receiving instruction or demonstration in normal or morbid anatomy and operative surgery, which number shall be certified by the dean of each school or college to the board at such times as it may direct. Instead of receiving and delivering said bodies themselves through their agent or servant, the said board may, from time to time, either directly or by their designated officer or agent authorize physicians and surgeons to receive them, and the number which each shall receive.

[Amended by Acts 1977, 65th Leg., p. 147, ch. 72, § 2, eff. April 25, 1977.]

Art. 4590-2. Anatomical Gift Act

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

Definitions

Sec. 2.

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

(i) "Eye Bank" means a nonprofit corporation, chartered under the laws of Texas, to obtain, store, and distribute donor eyes to be used by ophthalmologists for corneal transplants, for research, or for other medical purposes.

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

Persons who May Become Donees, and Purposes for Which Anatomical Gifts May be Made

Sec. 4. The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

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

(2) any accredited medical, chiropractic, or dental school, college or university for education, research, advancement of medical or dental science or therapy; or

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

(4) any individual specified by a licensed physician for therapy or transplantation needed by him; or

(5) any eye bank whose medical activities are directed by a licensed physician or surgeon.

[See Compact Edition, Volume 4 for text of 5 to 8]

[Amended by Acts 1977, 65th Leg., p. 28, ch. 12, §§ 5, 6, eff. March 10, 1977; Acts 1977, 65th Leg., p. 148, ch. 72, § 3, eff. April 25, 1977.]

Art. 4590-4. Justice of the Peace or Medical Examiner; Permitting Removal of Corneal Tissue

Permission to Take Tissue

Sec. 1. On a request from an authorized official of a nonprofit corporation chartered under the laws of Texas, to obtain, store, and distribute donor eyes to be used by those licensed to practice medicine for corneal transplants, for research, or for other medical purposes and whose medical activities are directed by one licensed to practice medicine in Texas, for corneal tissue, the justice of the peace or the medical examiner may permit the taking of corneal tissue if:

(1) the decedent from whom the tissue is to be taken died under circumstances requiring an inquest by the justice of the peace or the medical examiner;

(2) no objection by a person listed in Section 2 of this Act is known by the justice of the peace or the medical examiner; and

(3) the removal of corneal tissue will not interfere with the subsequent course of an investigation or autopsy, or alter the postmortem facial appearance.

Objection to Taking

Sec. 2. Objection may be made known to the justice of the peace or the medical examiner by the following persons:

- (1) the decedent's spouse;
- (2) if no spouse, the decedent's adult children;
- (3) if no adult children or spouse, the decedent's parents; or
- (4) if no parents, adult children, or spouse, the decedent's brothers or sisters.

Liability for Damages

Sec. 3. The justice of the peace, the medical examiner, and the eye bank official are not liable for damages in a civil action brought by a person listed in Section 2 of this Act who has not objected prior to the removal of the corneal tissue on any theory of civil recovery based on a contention that the consent of plaintiff was required prior to the removal of corneal tissue as authorized by this Act.

[Acts 1977, 65th Leg., p. 26, ch. 11, §§ 1 to 3, eff. March 10, 1977.]

Art. 4590-5. Eye Enucleation for Anatomical Donations

Persons Who May Enucleate Eye as Anatomical Gift

Sec. 1. Only the following persons may enucleate an eye when an eye is an anatomical gift:

- (1) a licensed physician or surgeon;
- (2) a licensed doctor of dental surgery or medical dentistry;
- (3) a licensed embalmer; or
- (4) a technician supervised by a physician or surgeon.

Eye Enucleation Course

Sec. 2. All persons, except licensed physicians, who perform eye enucleations must complete a course in eye enucleation that is taught by an ophthalmologist as defined in this Act and must possess a certificate showing the fulfillment of this requirement.

Requisites of Course

Sec. 3. The course must include anatomy and physiology of the eye, instruction in maintaining a sterile field during the procedure, use of the appropriate instruments, and sterile procedures for removing the corneal button and preserving it in a preservative fluid.

"Ophthalmologist" Defined

Sec. 4. "Ophthalmologist" means for the limited purpose of this Act one licensed to practice medicine who specializes in the treatment of diseases of the eye.

[Acts 1977, 65th Leg., p. 27, ch. 12, §§ 1 to 4, eff. March 10, 1977.]

CHAPTER SIXTEEN. BASIC SCIENCES

Art. 4590c. Basic Science Law

[See Compact Edition, Volume 4 for text of 1 to 3]

Application of Sunset Act

Sec. 3a. The State Board of Examiners in the Basic Sciences is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

[See Compact Edition, Volume 3 for text of 4 to 25]

[Amended by Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.046, eff. Aug. 29, 1977.]

CHAPTER TWENTY. NATURAL DEATH [NEW]

Art. 4590h. Natural Death Act

Short Title

Sec. 1. This Act shall be known and may be cited as the Natural Death Act.

Definitions

Sec. 2. In this Act:

(1) "Attending physician" means the physician selected by, or assigned by the physician selected by, the patient who has primary responsibility for the treatment and care of the patient.

(2) "Directive" means a written document voluntarily executed by the declarant in accordance with the requirements of Section 3 of this Act. The directive, or a copy of the directive, shall be made part of the patient's medical records.

(3) "Life-sustaining procedure" means a medical procedure or intervention which utilizes mechanical or other artificial means to sustain, restore, or supplant a vital function, which, when applied to a qualified patient, would serve only to artificially prolong the moment of death and where, in the judgment of the attending physician, noted in the qualified patient's medical records, death is imminent whether or not such procedures are utilized. "Life-sustaining

procedure" shall not include the administration of medication or the performance of any medical procedure deemed necessary to alleviate pain.

(4) "Physician" means a physician and surgeon licensed by the Texas State Board of Medical Examiners.

(5) "Qualified patient" means a patient diagnosed and certified in writing to be afflicted with a terminal condition by two physicians, one of whom shall be the attending physician, and the other shall be chosen by the patient or the attending physician, who have each personally examined the patient.

(6) "Terminal condition" means an incurable condition caused by injury, disease, or illness, which, regardless of the application of life-sustaining procedures, would, within reasonable medical judgment, produce death, and where the application of life-sustaining procedures serves only to postpone the moment of death of the patient.

Directive for Withholding or Withdrawal of Life-Sustaining Procedures in Event of Terminal Condition

Sec. 3. Any adult person may execute a directive for the withholding or withdrawal of life-sustaining procedures in the event of a terminal condition. The directive shall be signed by the declarant in the presence of two witnesses not related to the declarant by blood or marriage and who would not be entitled to any portion of the estate of the declarant on his decease under any will of the declarant or codicil thereto or by operation of law. In addition, a witness to a directive shall not be the attending physician, an employee of the attending physician or a health facility in which the declarant is a patient, a patient in a health care facility in which the declarant is a patient, or any person who has a claim against any portion of the estate of the declarant upon his decease at the time of the execution of the directive. The signature of the declarant shall be acknowledged, and the witnesses shall subscribe and swear to the directive before a notary public. The directive shall be in the following form:

DIRECTIVE TO PHYSICIANS

Directive made this _____ day of _____ (month, year).

I _____, being of sound mind, willfully and voluntarily make known my desire that my life shall not be artificially prolonged under the circumstances set forth below, and do hereby declare:

1. If at any time I should have an incurable condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, and where the application of life-sustaining proce-

dures would serve only to artificially prolong the moment of my death and where my attending physician determines that my death is imminent whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.

2. In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this directive shall be honored by my family and physicians as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

3. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive shall have no force or effect during the course of my pregnancy.

4. I have been diagnosed and notified at least 14 days ago as having a terminal condition by _____, M.D., whose address is _____, and whose telephone number is _____. I understand that if I have not filled in the physician's name and address, it shall be presumed that I did not have a terminal condition when I made out this directive.

5. This directive shall have no force or effect five years from the date filled in above.

6. I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

7. I understand that I may revoke this directive at any time.

Signed _____

City, County, and State of Residence _____
The declarant has been personally known to me and I believe him or her to be of sound mind. I am not related to the declarant by blood or marriage, nor would I be entitled to any portion of the declarant's estate on his decease, nor am I the attending physician of declarant or an employee of the attending physician or a health facility in which declarant is a patient, or a patient in the health care facility in which the declarant is a patient, or any person who has a claim against any portion of the estate of the declarant upon his decease.

Witness _____

Witness _____

STATE OF TEXAS

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared _____, _____, and _____, known to me to be the declarant and witnesses whose names are subscribed to the foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the declarant,

_____, declared to me and to the said witnesses in my presence that said instrument is his Directive to Physicians, and that he had willingly and voluntarily made and executed it as his free act and deed for the purposes therein expressed.

Declarant _____
 Witness _____
 Witness _____

Subscribed and acknowledged before me by the said Declarant, _____, and by the said witnesses, _____ and _____, on this _____ day of _____, 19____.

 Notary Public in and for _____ County,
 Texas

Revocation of Directive

Sec. 4. (a) A directive may be revoked at any time by the declarant, without regard to his mental state or competency, by any of the following methods:

- (1) by being canceled, defaced, obliterated, or burnt, torn, or otherwise destroyed by the declarant or by some person in his presence and by his direction;
- (2) by a written revocation of the declarant expressing his intent to revoke, signed and dated by the declarant. Such revocation shall become effective only on communication to an attending physician by the declarant or by a person acting on behalf of the declarant or by mailing said revocation to an attending physician. An attending physician or his designee shall record in the patient's medical record the time and date when he received notification of the written revocation and shall enter the word "VOID" on each page of the copy of the directive in the patient's medical records; or
- (3) by a verbal expression by the declarant of his intent to revoke the directive. Such revocation shall become effective only on communication to an attending physician by the declarant or by a person acting on behalf of the declarant. An attending physician or his designee shall record in the patient's medical record the time, date, and place of the revocation and the time, date, and place, if different, of when he received notification of the revocation and shall enter the word "VOID" on each page of the copy of the directive in the patient's medical records.

(b) Except as otherwise provided in this Act, there shall be no criminal or civil liability on the part of any person for failure to act on a revocation made pursuant to this section unless that person has actual knowledge of the revocation.

Duration of Directive

Sec. 5. A directive shall be effective for five years from the date of its execution unless sooner revoked in a manner prescribed in Section 4 of this Act. Nothing in this Act shall be construed to prevent a declarant from re-executing a directive at any time in accordance with the formalities of Section 3 of this Act, including re-execution subsequent to a diagnosis of a terminal condition. If the declarant has executed more than one directive, such time shall be determined from the date of execution of the last directive known to the attending physician. If the declarant becomes comatose or is rendered incapable of communicating with the attending physician, the directive shall remain in effect for the duration of the comatose condition or until such time as the declarant's condition renders him or her able to communicate with the attending physician, but in any event shall terminate at the end of five years from the date of execution.

Civil or Criminal Liability

Sec. 6. No physician or health facility which, acting in accordance with the requirements of this Act, causes the withholding or withdrawal of life-sustaining procedures from a qualified patient, shall be subject to civil liability therefrom unless negligent. No health professional, acting under the direction of a physician, who participates in the withholding or withdrawal of life-sustaining procedures in accordance with the provisions of this Act shall be subject to any civil liability unless negligent. No physician, or health professional acting under the direction of a physician, who participates in the withholding or withdrawal of life-sustaining procedures in accordance with the provisions of this Act shall be guilty of any criminal act or of unprofessional conduct unless negligent. No physician, health care facility, or health care professional shall be liable either civilly or criminally for failure to act pursuant to the declarant's directive where such physician, health care facility, or health care professional had no knowledge of such directive.

Failure to Execute Directive

Sec. 7. (a) Prior to effecting a withholding or withdrawal of life-sustaining procedures from a qualified patient pursuant to the directive, the attending physician shall determine that the directive complies with the form of the directive set out in Section 3 of this Act, and, if the patient is mentally competent, that the directive and all steps proposed by the attending physician to be undertaken are in accord with the existing desires of the qualified patient and are communicated to the patient.

(b) If the declarant was a qualified patient at least 14 days prior to executing or re-executing the directive, the directive shall be conclusively presumed, unless revoked, to be the directions of the

patient regarding the withholding or withdrawal of life-sustaining procedures. No physician, and no health professional acting under the direction of a physician, shall be criminally or civilly liable for failing to effectuate the directive of the qualified patient pursuant to this subsection. A failure by a physician to effectuate the directive of a qualified patient pursuant to this subsection may constitute unprofessional conduct if the physician refuses to make the necessary arrangements or fails to take the necessary steps to effect the transfer of the qualified patient to another physician who will effectuate the directive of the qualified patient.

(c) If the declarant becomes a qualified patient subsequent to executing the directive, and has not subsequently re-executed the directive, the attending physician may give weight to the directive as evidence of the patient's directions regarding the withholding or withdrawal of life-sustaining procedures and may consider other factors, such as information from the affected family or the nature of the patient's illness, injury, or disease, in determining whether the totality of circumstances known to the attending physician justifies effectuating the directive. No physician, and no health professional acting under the direction of a physician, shall be criminally or civilly liable for failing to effectuate the directive of the qualified patient pursuant to this subsection.

Effect on Offense of Aiding Suicide and Insurance Policies

Sec. 8. (a) The withholding or withdrawal of life-sustaining procedures from a qualified patient in accordance with the provisions of this Act shall not, for any purpose, constitute an offense under Section 22.08, Penal Code.

(b) The making of a directive pursuant to Section 3 of this Act shall not restrict, inhibit, or impair in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary.

(c) No physician, health facility, or other health provider, and no health care service plan, or insurer issuing insurance, may require any person to execute a directive as a condition for being insured for, or receiving, health care services nor may the execution or failure to execute a directive be considered in any way in establishing the premiums for insurance.

Tampering with Directive

Sec. 9. A person who willfully conceals, cancels, defaces, obliterates, or damages the directive of another without such declarant's consent shall be

guilty of a Class A misdemeanor. A person who falsifies or forges the directive of another, or willfully conceals or withholds personal knowledge of a revocation as provided in Section 4 of this Act, with the intent to cause a withholding or withdrawal of life-sustaining procedures contrary to the wishes of the declarant, and thereby, because of any such act, directly causes life-sustaining procedures to be withheld or withdrawn and death to thereby be hastened, shall be subject to prosecution for criminal homicide under the provisions of the Penal Code.

Mercy Killing not Condoned

Sec. 10. Nothing in this Act shall be construed to condone, authorize, or approve mercy killing, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying as provided in this Act.

Act as Cumulative

Sec. 11. Nothing in this Act shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner. In such respect the provisions of this Act are cumulative.

[Acts 1977, 65th Leg., p. 1085, ch. 398, §§ 1 to 11, eff. Aug. 29, 1977.]

CHAPTER TWENTY-ONE. MEDICAL LIABILITY AND INSURANCE IMPROVEMENT [NEW]

Art. 4590i. Medical Liability and Insurance Improvement Act

SUBCHAPTER A. GENERAL PROVISIONS

Short Title

Sec. 1.01. This part may be cited as the Medical Liability and Insurance Improvement Act of Texas.

Findings and Purposes

Sec. 1.02. (a) The Legislature of the State of Texas finds that:

- (1) the number of health care liability claims (frequency) has increased since 1972 inordinately;
- (2) the filing of legitimate health care liability claims in Texas is a contributing factor affecting medical professional liability rates;
- (3) the amounts being paid out by insurers in judgments and settlements (severity) have likewise increased inordinately in the same short period of time;
- (4) the effect of the above has caused a serious public problem in availability of and affordability of adequate medical professional liability insurance;

(5) the situation has created a medical malpractice insurance crisis in the State of Texas;

(6) this crisis has had a material adverse effect on the delivery of medical and health care in Texas, including significant reductions of availability of medical and health care services to the people of Texas and a likelihood of further reductions in the future;

(7) the crisis has had a substantial impact on the physicians and hospitals of Texas and the cost to physicians and hospitals for adequate medical malpractice insurance has dramatically risen in price, with cost impact on patients and the public;

(8) the direct cost of medical care to the patient and public of Texas has materially increased due to rising cost of malpractice insurance protection for physicians and hospitals in Texas;

(9) the crisis has increased the cost of medical care both directly through fees and indirectly through additional services provided for protection against future suits or claims; and defensive medicine has resulted in increasing cost to patients, private insurers, and the state and has contributed to the general inflation that has marked health care in recent years;

(10) satisfactory insurance coverage for adequate amounts of insurance in this area is often not available at any price;

(11) the combined effect of the defects in the medical, insurance, and legal systems has caused a serious public problem both with respect to the availability of coverage and to the high rates being charged by insurers for medical professional liability insurance to some physicians, health care providers, and hospitals;

(12) the adoption of certain modifications in the medical, insurance, and legal systems, the total effect of which is currently undetermined, may or may not have an effect on the rates charged by insurers for medical professional liability insurance;

(13) these facts have been verified by the Medical Professional Liability Study Commission, which was created by the 64th Legislature.¹ For further amplification of these facts the legislature adopts the findings of the report of the commission.

(b) Because of the conditions stated in Subsection (a) of this section, it is the purpose of this Act to improve and modify the system by which health care liability claims are determined in order to:

(1) reduce excessive frequency and severity of health care liability claims through reasonable improvements and modifications in the Texas insurance, tort, and medical practice systems;

(2) decrease the cost of those claims and assure that awards are rationally related to actual damages;

(3) do so in a manner that will not unduly restrict a claimant's rights any more than necessary to deal with the crisis;

(4) make available to physicians, hospitals, and other health care providers protection against potential liability through the insurance mechanism at reasonably affordable rates;

(5) make affordable medical and health care more accessible and available to the citizens of Texas;

(6) make certain modifications in the medical, insurance, and legal systems in order to determine whether or not there will be an effect on rates charged by insurers for medical professional liability insurance; and

(7) make certain modifications to the liability laws as they relate to health care liability claims only and with an intention of the legislature to not extend or apply such modifications of liability laws to any other area of the Texas legal system or tort law.

¹ See note under Insurance Code, art. 21.49-3.

Definitions

Sec. 1.03. (a) In this part:

(1) "Court" means any federal or state court.

(2) "Health care" means any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement.

(3) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution duly licensed or chartered by the State of Texas to provide health care as a registered nurse, hospital, dentist, podiatrist, pharmacist, or nursing home, or an officer, employee, or agent thereof acting in the course and scope of his employment.

(4) "Health care liability claim" means a cause of action against a health care provider or physician for treatment, lack of treatment, or other claimed departure from accepted standards of medical care or health care or safety which proximately results in injury to or death of the patient, whether the patient's claim or cause of action sounds in tort or contract.

(5) "Hospital" means a duly licensed public or private institution as defined in Chapter 223, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4437f, Vernon's Texas Civil Statutes), or in Section 88, Chapter 243, Acts of the 55th Legislature, Regular Session,

1957 (Article 5547–88, Vernon's Texas Civil Statutes).

(6) "Medical care" means any act defined as practicing medicine in Article 4510, Revised Civil Statutes of Texas, 1925, as amended, performed or furnished, or which should have been performed, by one licensed to practice medicine in Texas for, to, or on behalf of a patient during the patient's care, treatment, or confinement.

(7) "Pharmacist" means one licensed under Chapter 107, Acts of the 41st Legislature, Regular Session, 1929, as amended (Article 4542a, Vernon's Texas Civil Statutes), who, for the purposes of this Act, performs those activities limited to the dispensing of prescription medicines which result in health care liability claims and does not include any other cause of action that may exist at common law against them, including but not limited to causes of action for the sale of mishandled or defective products.

(8) "Physician" means a person licensed to practice medicine in this state.

(9) "Representative" means the spouse, parent, guardian, trustee, authorized attorney, or other authorized legal agent of the patient or claimant.

(b) Any legal term or word of art used in this part, not otherwise defined in this part, shall have such meaning as is consistent with the common law.

SUBCHAPTER B. ADDITIONAL DISCIPLINARY POWERS

Definitions

Sec. 2.01. In this subchapter:

(1) "Board" means the Texas State Board of Medical Examiners.

(2) "Medical peer review committee" means a committee of a state or local professional medical society, the governing board of a licensed hospital in this state or of a medical staff of a licensed hospital, nursing home, or other health care facility, provided the committee or medical staff operates pursuant to written bylaws that have been approved by the policymaking body or the governing board of the society, hospital, nursing home, or other health care facility, or other organization of physicians formed pursuant to state or federal law and authorized to evaluate medical and health care services.

Reporting by Medical Peer Review Committee or Physician

Sec. 2.02. Any medical peer review committee in this state and any physician licensed to practice medicine or otherwise lawfully practicing medicine in this state may report relevant facts to the board relating to the acts of any physician in this state if, in the opinion of the medical peer review committee

or the physician, they have knowledge relating to the physician that reasonably raises a question with respect to his or her competency.

Reporting by Professional Society

Sec. 2.03. A professional society in this state comprised primarily of physicians that takes formal disciplinary action against a member relating to professional ethics, medical incompetency, moral turpitude, or drug or alcohol abuse may report in writing to the board the name of the member, together with the pertinent information relating to the action.

Effect of Filing, Investigation, or Disposition by Board

Sec. 2.04. The filing of a report with the board pursuant to this article, investigation by the board, or any disposition by the board shall not, in and of itself, preclude any action by a hospital or other health care facility or professional society comprised primarily of physicians to suspend, restrict, or revoke the privileges or membership of the physician.

Handling of Report

Sec. 2.05. On a determination by the board that a report submitted by a medical peer review committee is without merit, the report shall be expunged from the physician's or applicant's individual historical record in the board's office. A physician or applicant or his authorized representative is entitled on request to examine the physician's or applicant's medical peer review report submitted to the board under the provisions of this subchapter, and to place into the record a statement of reasonable length of the physician's or applicant's view with respect to any information existing in the report. The statement shall at all times accompany that part of the record in contention.

Confidentiality

Sec. 2.06. (a) Reports, information, or records received and maintained by the board pursuant to this subchapter, including any material received or developed by the board during an investigation or hearing shall be strictly confidential and subject to the provisions of Subsection (c) of this section; however, the board may only disclose this confidential information:

(1) in a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order;

(2) to the physician licensing or disciplinary authorities of other jurisdictions, to a local, state, or national professional medical society, or to a medical peer review committee located inside or outside this state that is concerned with granting, limiting, or denying a physician hospital privileges;

(3) pursuant to an order of a court of competent jurisdiction; or

(4) to qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any person or physician is first deleted.

(b) Orders of the board relating to disciplinary action against a physician shall not be confidential.

(c) In no event shall records and reports received, maintained, or developed by the board, or disclosed by the board to others, pursuant to this article, be available for discovery or court subpoena, or introduced into evidence in a medical professional liability suit or other action for damages arising out of the provision of or failure to provide medical or health care services.

(d) A person found guilty of an unlawful disclosure of this confidential information possessed by the board shall be guilty of a Class A misdemeanor.

Immunity from Civil Liability

Sec. 2.07. A person reporting to or furnishing information to a medical peer review committee, and a member, employee, or agent of the committee, who makes a report or other information available to the board pursuant to this subchapter, or who assists in the organization, investigation, or preparation of this information, or who assists the board in carrying out its duties or functions provided by law, shall be immune from civil liability.

Reports and Data from Insurers

Sec. 2.08. (a) Every insurer providing medical professional liability insurance covering a physician or physicians in this state shall submit to the board the report or data described in Subsections (b) and (c) of this section at the time prescribed. The report or data shall be provided with respect to a complaint filed against an insured in a court, if the complaint seeks damages relating to the insured's conduct in providing or failing to provide medical or health care services, and with respect to settlement of a claim or lawsuit made on behalf of the insured. In the event a physician practicing medicine in this state does not carry or is not covered by medical professional liability insurance, or is insured by a nonadmitted carrier, the information required to be reported in Subsections (b) and (c) of this section shall be the responsibility of the physician.

(b) The following report or data shall be furnished to the board within 90 days after receipt by the insurer of the complaint from the insured:

- (1) the name of the insured;
- (2) the policy number;
- (3) the policy limits;
- (4) a copy of the complaint;
- (5) a copy of the answer; and
- (6) other pertinent data and information within the knowledge of the insurer as the board may require.

(c) The following report or data and information shall be furnished to the board within 90 days from a judgment, dismissal, or settlement of suit involving the insured, or settlement of any claim on behalf of the insured without the filing of a lawsuit:

- (1) the date of a judgment, dismissal, or settlement;
- (2) whether an appeal has been taken and by which party;
- (3) the amount of the settlement or judgment against the insured; and
- (4) other pertinent information within the knowledge of the insurer as the board may require.

(d) There shall be no liability on the part of and no cause of action of any nature shall arise against an insurer reporting under this section, or its agents or employees, or the board or its employees or representatives, for any action taken by them pursuant to this section.

(e) In the trial of a suit against a physician based on his conduct in providing or failing to provide medical or health care services, no report or data submitted to the board under this section nor the fact that the report or data has been submitted to the board may be offered in evidence or in any manner used in the trial of the case.

Report of Felony Conviction

Sec. 2.09. Within 30 days after the conviction of a person, known to be a physician, licensed or otherwise lawfully practicing in this state or applying to be so licensed to practice, of a felony under the laws of this state, the clerk of the court of record in which the conviction was entered shall prepare and forward to the board a certified true and correct abstract of record of the court governing the case. The abstract shall include the name and address of the physician or applicant, the nature of the offense committed, the sentence, and the judgment of the court. The board shall prepare the form of the abstract and shall distribute copies of it to all clerks of courts of record within this state with appropriate instructions for preparation and filing.

Report of Board Actions

Sec. 2.10. The board shall report within 30 days the restriction, suspension, or revocation of a physician's license or other disciplinary action by the board against a physician to the appropriate health facilities and hospitals, professional societies of physicians in this state, and any entity responsible for the administration of Medicare and Medicaid in this state.

Denial of License or other Authorization and Discipline of Physician

Sec. 2.11. In addition to other powers previously granted, the board shall have authority to deny an

application for a license or other authorization to practice medicine in this state and to discipline a physician licensed or otherwise lawfully practicing in this state, who, after a hearing, as provided in Article 4506, Revised Civil Statutes of Texas, 1925, as amended, has been adjudged by the board of:

(1) professional failure to practice medicine in an acceptable manner consistent with public health and welfare;

(2) being removed, suspended, or having disciplinary action taken by his or her peers in any professional medical association or society, whether the association or society is local, regional, state, or national in scope, or of being disciplined by a licensed hospital or the medical staff of a hospital, including removal, suspension, limitation of hospital privileges, or other disciplinary action, if that action in the opinion of the board was based on unprofessional conduct or professional incompetence which was likely to harm the public, provided that the board finds that the actions taken were appropriate and reasonably supported by evidence submitted to it; or

(3) repeated or recurring meritorious health care liability claims which in the opinion of the board evidence professional incompetence likely to injure the public.

Methods of Discipline

Sec. 2.12. If the board finds any person to have committed any of the acts set forth in Section 2.11 of this subchapter, it may enter an order imposing one or more of the following:

(1) deny the person's application for a license or other authorization to practice medicine;

(2) administer a public or private reprimand;

(3) suspend, limit, or restrict the person's license or other authorization to practice medicine, including limiting the practice of the person to or by the exclusion of one or more specified activities of medicine;

(4) revoke the person's license or other authorization to practice medicine;

(5) require the person to submit to care, counseling, or treatment of physicians designated by the board as a condition for initial, continued, or renewal of license or other authorization to practice medicine;

(6) require the person to participate in a program of education or counseling prescribed by the board; or

(7) require the person to practice under the direction of a physician designated by the board for a specified period of time.

Temporary Suspension of License

Sec. 2.13. If the board determines from evidence or information presented to it that a person licensed to practice medicine in this state by his continuation in practice would constitute an immediate danger to the public, the board, on majority vote of the members, may temporarily suspend the license of that person without notice or hearing on the complaint, provided institution of proceedings for a hearing before the board is initiated simultaneously with the temporary suspension and provided that a hearing is held as soon as can be accomplished under Chapter 6, Title 71, Revised Civil Statutes of Texas, 1925, as amended,¹ and the Administrative Procedure and Texas Register Act.²

¹ Article 4495 et seq.
² Article 6252-13a.

Appeal

Sec. 2.14. A person against whom disciplinary action is taken pursuant to this subchapter shall have the right of judicial appeal as provided under Article 4506, Revised Civil Statutes of Texas, 1925, as amended, provided that the person may not be allowed to practice medicine or deliver health care services in violation of any disciplinary order or action of the board while the appeal is pending unless otherwise stayed by the district judge wherein the venue of the appeal lies.

Powers Cumulative

Sec. 2.15. The provisions of Subchapter B of this Act are in addition to other laws relating to medical disciplinary powers and procedures of the Texas State Board of Medical Examiners.

SUBCHAPTER C. DISTRICT REVIEW COMMITTEES

Definitions

Sec. 3.01. In this subchapter:

(1) "Board" means the Texas State Board of Medical Examiners.

(2) "Committee" means a district review committee.

(3) "District" means the district established in Section 3.02 of this subchapter.

Districts

Sec. 3.02. For the purposes of this subchapter, there shall be established a reasonable number of districts in Texas. The number of and geographic areas composed of various counties shall be designated by the board. Within six months after the effective date of this Act, the board, after a public hearing, shall designate the number of districts as in its opinion are needed and the counties to be included in the districts, shall notify the governor of the designation, and shall have the designation published in the Texas Register. After the initial designation

of geographic areas in accordance with this section, the board, after a public hearing, may revise the number of districts and the composition of the various counties as it shall deem appropriate. In the event of change of the number or the composition of the various counties the board shall follow the same procedure as applies to the initial designations.

Creation of Committees; Composition; Appointment of Members; Qualifications

Sec. 3.03. A district review committee is created under the jurisdiction of the Texas State Board of Medical Examiners for each of the districts established in Section 3.02 of this subchapter. Each committee shall be composed of three persons appointed by the governor from among persons who have resided and practiced medicine in the district for more than three years before their appointment.

Term; Manner of Appointment

Sec. 3.04. (a) Each member of each committee shall be appointed by the governor, after designation of the districts, for a term of six years, except the terms of the initial members shall be as provided in Subsection (c) of this section.

(b) Each member shall hold office as long as qualified and until the appointment and qualification of his successor or until six months have elapsed since the expiration of the term for which he was appointed, whichever first occurs.

(c) The initial members of each committee shall classify themselves by lot, so that one of them shall serve a term which expires January 15, 1978, one of them shall serve a term which expires January 15, 1980, and one of them shall serve a term which expires January 15, 1982.

Filling of Vacancies

Sec. 3.05. Vacancies in the membership of a committee shall be filled by the governor by appointment for the unexpired term in the manner provided for making other appointments to a committee.

Per Diem and Expenses

Sec. 3.06. Each member of the committee shall receive the per diem and expenses provided for board members for actual duty or as provided by the board.

Rules Governing Members

Sec. 3.07. Each member of a committee is subject to law and the rules of the board as if he were a member of the board, except members shall not be subject to the provisions of Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9b, Vernon's Texas Civil Statutes).

Adoption, Amendment, or Repeal of Rules

Sec. 3.08. The board may adopt, amend, or repeal rules as may be reasonably necessary to carry

into effect the provisions of this subchapter relating to:

- (1) per diem and expenses of members;
- (2) matters to be heard by or considered by the committees;
- (3) the conduct of any hearings and the authority the board may delegate to the committees; and
- (4) other matters relating to the committee's actions, duties, and responsibilities as may be reasonable.

Limitation on Authority

Sec. 3.09. No committee may exercise final authority over the disposition of a complaint against a person licensed by the board or may issue a final order or rule, and the board must make final disposition of complaints against persons licensed by it and shall have the sole authority to issue final orders and rules.

SUBCHAPTER D. NOTICE

Notice

Sec. 4.01. (a) Any person or his authorized agent asserting a health care liability claim shall give written notice of such claim by certified mail, return receipt requested, to each physician or health care provider against whom such claim is being made at least 60 days before the filing of a suit in any court of this state based upon a health care liability claim.

(b) In such pleadings as are subsequently filed in any court, each party shall state that it has fully complied with the provisions of this section and shall provide such evidence thereof as the judge of the court may require to determine if the provisions of this Act have been met.

(c) Notice given as provided in this Act shall toll the applicable statute of limitations to and including a period of 75 days following the giving of the notice, and this tolling shall apply to all parties and potential parties.

(d) All parties shall be entitled to obtain complete and unaltered copies of the claimant's medical records from any other party within 10 days from the date of receipt of a written request for such records; provided, however, that the receipt of a medical authorization executed by the claimant herein shall be considered compliance by the claimant with this section.

SUBCHAPTER E. AD DAMNUM CLAUSE

Pleadings not to State Damage Amount; Special Exception; Exclusion from Section

Sec. 5.01. Pleadings in a suit based on a health care liability claim shall not specify an amount of money claimed as damages. The defendant may file a special exception to the pleadings on the ground

the suit is not within the court's jurisdiction, in which event, the plaintiff shall inform the court and defendant in writing of the total dollar amount claimed. This section does not prevent a party from mentioning the total dollar amount claimed in examining prospective jurors on voir dire or in argument to the court or jury.

SUBCHAPTER F. INFORMED CONSENT

Definition

Sec. 6.01. In this subchapter, "panel" means the Texas Medical Disclosure Panel.

Theory of Recovery

Sec. 6.02. In a suit against a physician or health care provider involving a health care liability claim that is based on the failure of the physician or health care provider to disclose or adequately to disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or health care provider, the only theory on which recovery may be obtained is that of negligence in failing to disclose the risks or hazards that could have influenced a reasonable person in making a decision to give or withhold consent.

Texas Medical Disclosure Panel

Sec. 6.03. (a) The Texas Medical Disclosure Panel is created to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure.

(b) The panel is a division of the Texas Department of Health Resources¹ and is under the supervision and subject to the rules and procedures of the Texas Department of Health Resources.

(c) The panel is composed of nine members, with three members licensed to practice law in this state and six members licensed to practice medicine in this state. Members of the panel shall be selected by the Director of Health Resources.

(d) Members of the panel serve for terms of two years, with their terms expiring on September 1 of each odd-numbered year. Vacancies on the panel are filled in the manner provided in Subsection (c) of this section for making the original selection and the person appointed to fill the vacancy serves for the unexpired term.

(e) Members of the panel are not entitled to compensation for their services, but each panelist is entitled to reimbursement of any necessary expense incurred in the performance of his duties on the panel including necessary travel expenses.

(f) Meetings of the panel shall be held at the call of the chairman or on petition of at least three members of the panel.

(g) At the first meeting of the panel after its members assume their positions, the panelists shall select one of the panel members to serve as chairman and one of the panel members to serve as vice-chairman. The chairman shall preside at meetings of the panel, and in his absence, the vice-chairman shall preside.

(h) Employees of the Texas Department of Health Resources shall serve as the staff for the panel.

¹ Department of Health Resources abolished and Department of Health created by Acts 1977, 65th Leg., ch. 474; see art. 4418g.

Duties of Panel

Sec. 6.04. (a) To the extent feasible, the panel shall identify and make a thorough examination of all medical treatments and surgical procedures in which physicians and health care providers may be involved in order to determine which of those treatments and procedures do and do not require disclosure of the risks and hazards to the patient or person authorized to consent for the patient.

(b) The panel shall prepare separate lists of those medical treatments and surgical procedures that do and do not require disclosure and for those treatments and procedures that do require disclosure shall establish the degree of disclosure required and the form in which the disclosure will be made.

(c) Lists prepared under Subsection (b) of this section together with written explanations of the degree and form of disclosure shall be published in the Texas Register.

(d) At least annually, or at such other period the panel may determine from time to time, the panel will identify and examine any new medical treatments and surgical procedures that have been developed since its last determinations, shall assign them to the proper list, and shall establish the degree of disclosure required and the form in which the disclosure will be made. These determinations shall be published in the Texas Register.

Duty of Physician or Health Care Provider

Sec. 6.05. Before a patient or a person authorized to consent for a patient gives consent to any medical care or surgical procedure that appears on the panel's list requiring disclosure, the physician or health care provider shall disclose to the patient, or person authorized to consent for the patient, the risks and hazards involved in that kind of care or procedure. A physician or health care provider shall be considered to have complied with the requirements of this section if disclosure is made as provided in Section 6.06 of this subchapter.

Manner of Disclosure

Sec. 6.06. Consent to medical care that appears on the panel's list requiring disclosure shall be considered effective under this subchapter if it is given in writing, signed by the patient or a person autho-

rized to give the consent and by a competent witness, and if the written consent specifically states the risks and hazards that are involved in the medical care or surgical procedure in the form and to the degree required by the panel under Section 6.04 of this subchapter.

Effect of Disclosure

Sec. 6.07. (a) In a suit against a physician or health care provider involving a health care liability claim that is based on the negligent failure of the physician or health care provider to disclose or adequately to disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or health care provider:

(1) both disclosure made as provided in Section 6.05 of this subchapter and failure to disclose based on inclusion of any medical care or surgical procedure on the panel's list for which disclosure is not required shall be admissible in evidence and shall create a rebuttable presumption that the requirements of Sections 6.05 and 6.06 of this subchapter have been complied with and this presumption shall be included in the charge to the jury; and

(2) failure to disclose the risks and hazards involved in any medical care or surgical procedure required to be disclosed under Sections 6.05 and 6.06 of this subchapter shall be admissible in evidence and shall create a rebuttable presumption of a negligent failure to conform to the duty of disclosure set forth in Sections 6.05 and 6.06 of this subchapter, and this presumption shall be included in the charge to the jury; but failure to disclose may be found not to be negligent if there was an emergency or if for some other reason it was not medically feasible to make a disclosure of the kind that would otherwise have been negligence.

(b) If medical care or surgical procedure is rendered with respect to which the panel has made no determination either way regarding a duty of disclosure, the physician or health care provider is under the duty otherwise imposed by law.

SUBCHAPTER G. RES IPSA LOQUITUR

Application of Res Ipsa Loquitur

Sec. 7.01. The common-law doctrine of res ipsa loquitur shall only apply to health care liability claims against health care providers or physicians in those cases to which it has been applied by the appellate courts of this state as of the effective date of this subchapter.

SUBCHAPTER H. BAD FAITH CAUSE OF ACTION

Separate Cause of Action for Bad Faith

Sec. 8.01. With respect to a health care liability claim actually filed, a cause of action based on bad

faith may be filed and litigated in a separate lawsuit.

Definition

Sec. 8.02. As used in this subchapter, "bad faith" means to file and maintain a claim with reckless disregard as to whether or not reasonable grounds exist for asserting the claim.

Notice of Bad Faith Claim

Sec. 8.03. At least 60 days before the filing of a suit based on bad faith in any court of this state, a person or his authorized agent asserting a bad faith cause of action shall give written notice by certified mail, return receipt requested, of the claim, to the defendant or his attorney against whom the claim is being made.

Persons against Whom Claims may be Made; Damage Limits

Sec. 8.04. The right of action created in this subchapter shall lie against any claimant or defendant or claimant's or defendant's attorney, or both, who file a health care liability claim in bad faith, or file a claim under this article in bad faith, and the measure of damages with respect thereto shall be limited to \$100,000 for compensatory and exemplary damages, as applicable.

Effective Date

Sec. 8.05. This subchapter will take effect if and only if the State Bar of Texas fails to certify to the Supreme Court of Texas by January 31, 1979, that it has adopted rules for appropriate disciplinary measures against an attorney who has been determined to have filed a claim in bad faith. If the provisions of this section are held unconstitutional or invalid for any reason, the legislature specifically declares this section to be severable and that such holding shall in no way affect the validity of the other sections of this subchapter.

SUBCHAPTER I. ADVANCE PAYMENTS

Advance Payments not Admission of Liability

Sec. 9.01. In an action brought to recover damages based on a health care liability claim, no advance payment made on that claim by the defendant health care provider or physician, or the professional liability insurer, to or for the claimant, or any other person, shall be construed as an admission of liability by the health care provider or physician or any person for any injuries or damages suffered by the claimant or anyone else.

Admissibility of Advance Payments

Sec. 9.02. Except as provided in this subchapter, evidence of an advance payment shall not be admissible during the trial of an action based on a health care liability claim at any stage of the proceedings, unless and until there is a final award in favor of the claimant, in which event the trial judge shall

reduce the award to the claimant to the extent of the advance payment.

Adjustments for Advance Payments

Sec. 9.03. The advance payment shall inure to the exclusive benefit of the defendant or his or its carrier making the advance payment, and in the event the advance payment exceeds the pro rata liability of the defendant or the carrier making the payment, the trial judge shall order any adjustment necessary to equalize the amount which each defendant is obligated to pay under this subchapter, exclusive of costs.

Certain Advance Payments Exempt from Repayment

Sec. 9.04. In no case shall an advance payment in excess of an award be repayable by the person receiving it.

SUBCHAPTER J. STATUTE OF LIMITATIONS

Limitations on Health Care Liability Claims

Sec. 10.01. Notwithstanding any other law, no health care liability claim may be commenced unless the action is filed within two years from the occurrence of the breach or tort or from the date the medical or health care treatment that is the subject of the claim or the hospitalization for which the claim is made is completed; provided that, minors under the age of 12 years shall have until their 14th birthday in which to file, or have filed on their behalf, the claim. Except as herein provided, this subchapter applies to all persons regardless of minority or other legal disability.

Causes of Action Covered by Other Law

Sec. 10.02. Causes of action accruing between the effective date of this Act and the effective date of Article 5.82, Insurance Code, shall be filed pursuant to Section 4 of Article 5.82.

SUBCHAPTER K. LIABILITY LIMITS

Definition

Sec. 11.01. In this subchapter, "consumer price index" means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of goods and services purchased by urban wage earners and clerical workers' families and single workers living alone.

Limit on Civil Liability

Sec. 11.02. (a) In an action on a health care liability claim where final judgment is rendered against a physician or health care provider, the limit of civil liability for damages of the physician or health care provider shall be limited to an amount not to exceed \$500,000.

(b) Subsection (a) of this section does not apply to the amount of damages awarded on a health care liability claim for the expenses of necessary medical, hospital, and custodial care received before judgment or required in the future for treatment of the injury.

(c) This section shall not limit the liability of any insurer where facts exist that would enable a party to invoke the common law theory of recovery commonly known in Texas as the "Stowers Doctrine."

(d) In any action on a health care liability claim that is tried by a jury in any court in this state, the following shall be included in the court's written instructions to the jurors: Do not consider, discuss, nor speculate whether or not liability, if any, on the part of any party is or is not subject to any limit under applicable law.

Alternative Partial Limit on Civil Liability

Sec. 11.03. In the event that Section 11.02(a) of this subchapter is stricken from this subchapter or is otherwise invalidated by a method other than through legislative means, the following shall become effective:

In an action on a health care liability claim where final judgment is rendered against a physician or health care provider, the limit of civil liability of the physician or health care provider for all past and future noneconomic losses recoverable by or on behalf of any injured person and/or the estate of such person, including without limitation as applicable past and future physical pain and suffering, mental anguish and suffering, consortium, disfigurement, and any other nonpecuniary damage, shall be limited to an amount not to exceed \$150,000.

Adjustment of Liability Limits

Sec. 11.04. When there is an increase or decrease in the consumer price index with respect to the amount of that index on the effective date of this subchapter each of the liability limits prescribed in Section 11.02(a) or in Section 11.03 of this subchapter, as applicable, shall be increased or decreased, as applicable, by a sum equal to the amount of such limit multiplied by the percentage increase or decrease in the consumer price index between the effective date of this subchapter and the time at which damages subject to such limits are awarded by final judgment or settlement.

Subchapter's Application Prevails over Certain Other Laws

Sec. 11.05. The provisions of this subchapter shall apply notwithstanding the provisions contained

in Article 4671, Revised Civil Statutes of Texas, 1925, as amended, and the provisions of Article 5525, Revised Civil Statutes of Texas, 1925, as amended.

SUBCHAPTER L. MISCELLANEOUS
PROVISIONS

Exception From Certain Laws

Sec. 12.01. (a) Notwithstanding any other law, no provisions of Sections 17.41–17.63, Business & Commerce Code, shall apply to physicians or health care providers as defined in Section 1.03(3) of this Act, with respect to claims for damages for personal injury or death resulting, or alleged to have resulted,

from negligence on the part of any physician or health care provider.

(b) This section shall not apply to pharmacists. [Acts 1977, 65th Leg., p. 2039, ch. 817, Part 1, eff. Jan. 1, 1978.]

Sections 41.01 to 41.04 of the 1977 Act provide as follows:

"Sec. 41.01. The provisions of this Act shall apply only to causes of action based on health care liability claims accruing after the effective date of this Act."

"Sec. 41.02. This Act expires at midnight on August 31, 1993."

"Sec. 41.03. Art. 5.82, Ins.Code, and Section 3, Chapter 331, Acts of the 64th Legislature, Regular Session, 1975, are repealed."

"Sec. 41.04. If any provision of this statute or its application to any person or circumstance is held invalid or unconstitutional, such invalidity does not affect other provisions or applications of this statute which can be given effect without the invalid clause, sentence, subsection, section, article, or provision or application, and shall not affect, impair, invalidate, or nullify the remainder of this Act, but the effect thereof shall be confined to the clause, sentence, subsection, section, article, or provision of the Act so adjudged to be invalid or unconstitutional and to this end the above are declared to be severable."

TITLE 72

HOLIDAYS—LEGAL

Article

4591b-1. Sam Rayburn Day [NEW].

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.]

Art. 4591b-1. Sam Rayburn Day

January 6 of each year is designated as "Sam Rayburn Day," in memory of that great Texas and American statesman, Sam Rayburn. This day shall be regularly observed by appropriate programs in the public schools and other places to commemorate the birthday of Sam Rayburn. This day shall not be a legal holiday.

[Acts 1977, 65th Leg., p. 1411, ch. 571, § 1, eff. Aug. 29, 1977.]

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].
- 5069-1.08. Interest Charges by Registered Securities Brokers or Dealers [NEW].
- 5069-1.09. Loans Guaranteed or Insured by an Agency of the United States of America [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).

(c) Notwithstanding any contrary provisions of law, any person may agree to pay, and may pay pursuant to such an agreement, the same rate of interest as corporations (other than nonprofit corporations) on any loan in the principal amount of \$500,000 or more, which is made for the purpose of the payment of the direct or indirect costs of exploration for oil and gas, the development of oil and gas properties, or the reworking of oil or gas wells, provided that the value of the collateral securing such loan is reasonably estimated by the lender at the time of the making of the loan to be in excess of the amount of the loan. Such a loan shall not be subject to the defense of usury or the penalties for usury unless the interest rate exceeds the maximum lawful interest rate for corporations (other than nonprofit corporations).

[Added by Acts 1975, 64th Leg., p. 47, ch. 26, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1697, ch. 673, § 1, eff. Aug. 29, 1977.]

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."

Art. 5069-1.08. Interest Charges by Registered Securities Brokers or Dealers

Interest charged by a broker or dealer registered under the Federal Securities and Exchange Act of

1934, as now or hereafter amended,¹ and The Securities Act, as now or hereafter amended,² for carrying a debit balance in an account for a customer shall not be subject to any of the limitations or other provisions of Title 79, Revised Civil Statutes of Texas (Article 5069—1, et seq., Vernon's Texas Civil Statutes) as now or hereafter amended, if such debit balance is payable on demand, or at will by the customer without penalty, and is secured by stocks, bonds, or other securities, and if such interest does not exceed a rate of 1½ percent per month on the monthly debit balance.

[Added by Acts 1977, 65th Leg., p. 945, ch. 355, § 1, eff. Aug. 29, 1977.]

¹ 15 U.S.C.A. § 77b et seq.
² Article 581—1 et seq.

Art. 5069—1.09. Loans Guaranteed or Insured by an Agency of the United States of America

Any loan insured by the Federal Housing Administration, pursuant to the provisions of the National Housing Act approved June 27, 1934, its amendments and supplements (12 U.S.C.A., Section 17.01 et seq. (1969), as amended), may bear such rate of interest, or be discounted at such rate as is permitted under the National Housing Act, its amendments and supplements, and the regulations promulgated from time to time by the Federal Housing Administration or its successor; and provided further that any loan guaranteed or insured by the Veterans Administration or its successor pursuant to the provisions of the Veterans' Benefits code approved September 2, 1958, its amendments and supplements (Title 38 U.S.C.A. (1959), as amended), may bear such rate of interest or be discounted at such rate as is permitted under the Veterans' Benefits code, its amendments and supplements, and the regulations promulgated from time to time by the Veterans Administration or its successor.

[Added by Acts 1977, 65th Leg., p. 172, ch. 84, § 1, eff. April 28, 1977.]

Section 2 of the 1977 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."

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—2.02. Creation of the Office of Consumer Credit Commissioner and Division of Consumer Protection

[See Compact Edition, Volume 3 for text of (1) to (7)]

(8) The office of Consumer Credit Commissioner is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished effective September 1, 1983.

[Amended by Acts 1977, 65th Leg., p. 1841, ch. 735, § 2.069, eff. Aug. 29, 1977.]

¹ Article 5429k.

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 3. REGULATED LOANS

Art. 5069—3.05. License, Annual Fee, Minimum Assets

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

(2) Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. Every licensee shall, on or before each December 1st, pay the Consumer Credit Commissioner an annual fee for each license held by him for the succeeding calendar year. The annual fee shall be Two Hundred Dollars, except if on September 30 immediately preceding the due date of the annual fee, the gross unpaid balance of regulated loans in a licensed office is One Hundred Thousand Dollars or less the annual fee for that office shall be One Hundred Dollars. If the annual fee remains unpaid fifteen days after written notice of delinquency has been given to the licensee by the Consumer Credit Commissioner, the license shall thereupon expire but not before December 31st of any year for which an annual fee has been paid.

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

[Amended by Acts 1977, 65th Leg., p. 877, ch. 329, § 1, eff. May 30, 1977.]

Art. 5069—3.08. Examination of Licensees, Access to Records, Investigation

At such times as the Commissioner shall deem necessary, the Commissioner, or his duly authorized representative shall make an examination of the place of business of each licensee and shall inquire into and examine the loans, transactions, books, accounts, papers, correspondence, and records of

such licensee insofar as they pertain to the business regulated by this Chapter. In the course of such examination, the 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 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 Chapter to consider, investigate, or secure information. Any licensee who shall fail or refuse to let the Commissioner or his duly authorized representative examine or make copies of such books, or other relevant documents shall thereby be deemed in violation of this Chapter and such failure or refusal shall constitute grounds for the suspension or revocation of such license. The information obtained in the course of such examination shall be confidential. Each licensee shall pay to the Commissioner an amount assessed by the Commissioner to cover the direct and indirect cost of such examination and a proportionate share of general administrative expense, and the total cost so assessed and charged a licensee in any one calendar year shall not exceed Five Hundred Dollars for each licensed office.

[Amended by Acts 1977, 65th Leg., p. 877, ch. 329, § 2, eff. May 30, 1977.]

CHAPTER SIX. RETAIL INSTALLMENT SALES

Art. 5069-6.01. Definitions

As used in this Chapter, unless the context otherwise requires:

(a) "Goods" means all tangible personal property when purchased primarily for personal, family or household use and not for commercial or business use, including such property which is furnished or used at the time of sale or subsequently, in the modernization, rehabilitation, repair, alteration, improvement or construction of real property so as to become a part thereof whether or not severable therefrom. The term also includes, but is not limited to, a structure, except a mobile home, to be used as a residence, any boat, boat-trailer, motor scooter, motorcycle, camper-type trailer, horse trailer, any vehicle propelled or drawn exclusively by muscular power, and merchandise certificates or coupons, issued by a retail seller, not redeemable in cash and to be used in their face amount in lieu of cash, in exchange for goods or services sold by such seller.

The term does not include

(i) money, things in action or intangible personal property, other than merchandise certificates or coupons as herein described; or

(ii) any automobile, mobile home, truck, trailer, semitrailer, truck tractor or bus designed and used primarily to transport persons or property on a public highway; or

(iii) any vehicle designed to run only on rails or tracks or in the air, as defined in Chapter 7 of this Subtitle.

[See Compact Edition, Volume 3 for text of (b) to (d)]

(e) "Retail installment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail installment contract or a retail charge agreement, as defined in this Article, which provides for a time price differential, as defined in this Article, and under which the buyer agrees to pay the unpaid balance in one or more installments, together with a time price differential. The term also includes transactions made pursuant to a seller credit card as defined in this Article.

[See Compact Edition, Volume 4 for text of (f) to (o)]

(p) "Seller credit card" means an arrangement pursuant to which a retail seller gives to a retail buyer or lessee the privilege of using a credit card for the purpose of purchasing or leasing goods or services from that person, a person related to that person, or others licensed or franchised to do business under his business or trade name or designation.

[Amended by Acts 1977, 65th Leg., p. 212, ch. 104, § 2, eff. May 4, 1977; Acts 1977, 65th Leg., p. 2080, ch. 830, §§ 1, 2, eff. June 16, 1977.]

Art. 5069-6.05. Prohibited Provisions

No retail installment contract or retail charge agreement shall:

[See Compact Edition, Volume 4 for text of (1) to (6)]

(7) Provide for or grant a first lien upon real estate to secure such obligation, except, (a) such lien as is created by law upon the recording of an abstract of judgment or (b) such lien as is provided for or granted by a contract or series of contracts for the sale or construction and sale of a structure to be used as a residence so long as the time price differential does not exceed an annual percentage rate of 10 percent.

[Amended by Acts 1977, 65th Leg., p. 212, ch. 104, § 1, eff. May 4, 1977.]

CHAPTER SEVEN. MOTOR VEHICLE INSTALLMENT SALES

Art. 5069—7.06. Insurance

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

(8) A buyer and seller may agree to include motor vehicle property damage or bodily injury liability insurance, mechanical breakdown insurance, or a warranty or service contract relating to the motor vehicle as a separate charge in a contract for the sale of a motor vehicle. If a charge is added to a contract as provided by this section, the contract shall clearly and conspicuously disclose that fact.

[See Compact Edition, Volume 4 for text of (9)]

[Amended by Acts 1977, 65th Leg., p. 1355, ch. 536, § 1, eff. June 15, 1977.]

CHAPTER EIGHT. PENALTIES

Art. 5069—8.01. Contracting For, Charging or Receiving Interest, Time Price Differential or Other Charges Greater Than Authorized; Failure to Perform Duty or Committing Prohibited Act; Correction of Violations

(a) Any person who violates this Subtitle by contracting for, charging or receiving interest, time price differential or other charges which are greater than the amount authorized by this Subtitle, shall forfeit to the obligor twice the amount of interest or time price differential and default and deferment charges contracted for, charged or received, and reasonable attorneys' fees fixed by the court.

(b) Any person who violates this Subtitle or Chapter 14 of this Title by

(i) failing to perform any duty or requirement specifically imposed on him by any provision of this Subtitle or Chapter 14 of this Title, or by

(ii) committing any act or practice prohibited by this Subtitle or Chapter 14 of this Title, shall be liable to the obligor for a penalty in an amount equal to twice the time price differential or interest contracted for, charged, or received but not to exceed \$2,000 in a transaction in which the amount financed is \$5,000 or less, and not to exceed \$4,000 in a transaction in which the amount financed is in excess of \$5,000 and reasonable attorneys' fees fixed by the court.

(c)(1) A person has no liability to an obligor for a violation of this Subtitle or of Chapter 14 of this Title if within 60 days after having actually discovered such violation such person corrects such violation as to such obligor by performing the required duty or act or by refunding any amount in excess of

that authorized by law; provided, however, that such person gives written notice to such obligor of such violation prior to such obligor having given written notice of or having filed an action alleging such violation of this Subtitle or of Chapter 14 of this Title.

As used herein, the term "actually discovered" shall not be construed, interpreted, or applied in such manner as to refer to the time or date when, through reasonable diligence, an ordinarily prudent person could or should have discovered or known as a matter of law or fact of the violation in question, but such term shall be construed, interpreted, and applied to refer to the time of the discovery of the violation in fact, provided, however, that the actual discovery of such violation in one transaction may constitute actual discovery of the same violation in other transactions if the violation actually discovered is of such nature that it would necessarily be repeated and would be clearly apparent in such other transactions without the necessity of examining all such other transactions.

(2) A person has no liability to an obligor for a violation of this Subtitle or of Chapter 14 of this Title if prior to the effective date of the Act or within 60 days after the effective date of the Act such person corrects such violation as to such obligor by performing the required duty or act or by refunding any amount in excess of that authorized by law; provided, however, that such person gives written notice to such obligor of such correction prior to such obligor having given written notice of or having filed an action alleging such violation of this Subtitle or of Chapter 14 of this Title.

(3) If, subsequent to the times specified in Article 8.01(c)(1) and (2) of this Act but prior to the obligor having given written notice of or having filed an action alleging a violation for which a penalty is provided in Article 8.01(b) of this Act, such violation is corrected as to such obligor by performing the required duty or act and written notice of such violation is given to such obligor, then the liability of any person to such obligor shall be limited in each transaction to a penalty in an amount equal to the time price differential or interest contracted for, charged, or received but not to exceed \$2,000 and reasonable attorneys' fees fixed by the court.

(4) If, subsequent to the times specified in Article 8.01(c)(1) and (2) of this Act but prior to the obligor having given written notice of or having filed an action alleging a violation for which a penalty is provided in Article 8.01(a) of this Act for contracting for, charging, or receiving

(i) other charges in excess of the amount authorized by law, or

(ii) interest or time price differential in excess of the amount authorized by law, where

such excess is directly and solely attributable to and calculated upon the amount of such other charges, or

(iii) both of the foregoing, such violation is corrected as to such obligor by refunding the amount of the excess and written notice of such refund is given to such obligor, then the liability of any person to such obligor shall be limited in each transaction to a penalty in an amount equal to the time price differential or interest contracted for, charged, or received but not to exceed \$2,000 and reasonable attorneys' fees fixed by the court.

(5) For purposes of this Article the giving of written notice shall be accomplished by and upon the delivery of such notice to the person to whom such notice is directed or to such person's duly authorized agent or attorney of record, such delivery to be made either in person or by United States mail to the address shown on the most recent documents in the transaction. Deposit of such notice as registered or certified mail in a postage paid, properly addressed wrapper in a post office or official depository under the care and custody of the United States Postal Service shall constitute prima facie evidence of the delivery of such notice to such person.

(d) The action of a person who corrects a violation of this Subtitle or of Chapter 14 of this Title pursuant to Article 8.01(c) of this Act shall be effective as to all persons in the same transaction, and such persons shall be entitled to the same protection as that provided by Article 8.01(c) of this Act to the person who makes the correction.

(e) If a person has violated both Articles 8.01(a) and 8.01(b) of this Act as part of the same transaction, then he shall be liable only for the penalties set forth in Article 8.01(a) of this Act.

(f) A person may not be held liable in any action brought under this Article for a violation of this Subtitle or of Chapter 14 of this Title if such person shows by a preponderance of evidence that (1) the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such violation or that (2) the violation was an act done or omitted in good faith in conformity with any rule, regulation, or interpretation of this Title by any state agency, board, or commission, or with the federal Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) or with any rule, regulation, or interpretation thereof by any federal agency, board, or 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) Multiple violations of this Subtitle or Chapter 14 of this Title occurring in a single transaction shall entitle the obligor to a single recovery.

(h) The liability of any person under this Article for a violation of this Subtitle is in lieu of and not in addition to his liability under the federal Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.). A final judgment granting or denying relief under the federal Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) shall bar any subsequent action under this Article by the same obligor with respect to the same violation. If a final judgment has been rendered against any person in favor of an obligor pursuant to this Article and thereafter an action is instituted with respect to the same violation by the obligor under the federal Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) against the same person, then such person may in the same or in an independent action have a cause of action against the obligor who obtained such judgment to recover the amount of the judgment rendered under this Article and reasonable attorneys' fees fixed by the court.

[Amended by Acts 1977, 65th Leg., p. 228, ch. 111, § 1, eff. Aug. 31, 1977.]

Section 2 of the 1977 amendatory act added subsec. (i) to art. 5069-14.19; §§ 3 to 5 thereof provided:

"Sec. 3. The provisions of this Act shall become effective at midnight on August 31, 1977, and shall apply to all transactions entered into prior to such date; provided, however, that this Act shall not apply to any action brought under Subtitle 2 or Chapter 14 of Title 79 that is pending on such date; and provided further, that the penalty for any violation of Title 79 of the type referred to in Article 8.01(b) of Section 1 of this Act occurring in a transaction entered into prior to July 1, 1976, which violation has not been corrected as provided in Article 8.01(c) of Section 1 of this Act, shall be determined by the law in effect prior to the effective date of this Act so that the penalty provided for in Article 8.01(b) shall apply only to violations in transactions entered into after June 30, 1976, which have not been corrected as provided in Article 8.01(c)."

"Sec. 4. This Act shall supersede any other act passed at the Regular Session of the 65th Legislature which amends any article or section of Chapter 8 or Chapter 14 of Title 79, Revised Civil Statutes of Texas, 1925, as amended, regardless of the relative date of the passage or approval of such other act."

"Sec. 5. If any provision, paragraph, subsection, or section of this Act or the application thereof to any person or circumstance is determined to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other application thereof which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions, paragraphs, subsections, and sections of the Act are severable."

Art. 5069-8.02. Contracting For, Charging or Receiving Interest, Time Price Differential or Other Charges in Excess of Double the Amount Authorized

Any person who violates this Subtitle by contracting for, charging or receiving interest, time price differential or other charges which are in the aggregate in excess of double the total amount of interest, time price differential and other charges authorized by this Subtitle shall forfeit to the obligor as an additional penalty all principal or principal balance, as well as all interest or time price differential, and all other charges, and shall pay reasonable attorneys' fees actually incurred by the obligor in enforcing the provisions of this Article; provided further that any such person violating provisions of this Article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than One Hundred Dollars. Each contract or transaction in violation of this Article shall constitute a separate offense punishable hereunder.

[Amended by Acts 1977, 65th Leg., p. 228, ch. 111, § 1, eff. Aug. 31, 1977.]

Art. 5069-8.03. Engaging in Lending Business Without License

In addition to the foregoing penalties, if applicable, any person engaging in any business under the scope of Chapters 3, 4, or 5 of this Subtitle without first securing a license provided, or without the authorization prescribed, in such Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than One Thousand Dollars, and each such loan made without the authority granted by such license shall constitute a separate offense punishable hereunder; and in addition such person shall forfeit all principal and charges contracted for or collected on each such loan, and shall pay reasonable attorneys' fees incurred by the obligor.

[Amended by Acts 1977, 65th Leg., p. 228, ch. 111, § 1, eff. Aug. 31, 1977.]

Art. 5069-8.04. Venue and Limitation Periods

Actions under this Chapter may be brought in the county where the transaction was entered into or where the Defendant resides at the time the action was filed. Such actions may be brought within four years from the date of the loan or retail installment transaction or within two years from the date of the occurrence of the violation, whichever is later; provided, however, that in the case of open-end credit transactions, such actions may be brought within two years from the date of the occurrence of the violation.

[Amended by Acts 1977, 65th Leg., p. 228, ch. 111, § 1, eff. Aug. 31, 1977.]

Art. 5069-8.05. Violating Terms of Injunction

Any person who violates the terms of an injunction duly issued under this Subtitle shall forfeit and pay to the State a civil penalty of not more than One Thousand Dollars per violation. For the purposes of this Article, the District Court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General may petition for recovery of such civil penalties.

[Amended by Acts 1977, 65th Leg., p. 228, ch. 111, § 1, eff. Aug. 31, 1977.]

Art. 5069-8.06. Violation of Art. 5069-2.07

[See *Compact Edition, Volume 4* for text of (a) and (b)]

[Amended by Acts 1977, 65th Leg., p. 228, ch. 111, § 1, eff. Aug. 31, 1977.]

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.

Article

- 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 own-

er 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(f).

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, prescribe 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. 5069–14.19. 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.

(h) [Blank]

(i) The liability of any creditor who fails in connection with any consumer-credit transaction entered into after July 1, 1976, to disclose to any person any information required under this Chapter to be disclosed to that person shall be determined by the provisions of Chapter 8 of this Title.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975. Amended by Acts 1977, 65th Leg., p. 231, ch. 111, § 2, eff. Aug. 31, 1977.]

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 subsequent 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 INCLUDED 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]

CHAPTER FIFTY-ONE. PAWNSHOPS

Art. 5069-51.08. Examinations

At such times as the Commissioner may deem necessary, the Commissioner, or his duly authorized representative, may make an examination of the place of business of each licensee and may inquire into and examine the transactions, books, accounts, papers, correspondence and records of such licensee insofar as they pertain to the business regulated by this Act. Such books, accounts, papers, correspondence and records shall also be open for inspection at any reasonable time by any peace officer, without need of judicial writ or other process. In the course of an examination, the 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 any books, accounts, papers, correspondence and records. The 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 Act to consider, investigate, or secure information. Any licensee who fails or refuses to let the Commissioner or his duly authorized representative or any peace officer examine or make copies of such books, or other relevant documents shall thereby be deemed in violation of this Act and such failure or refusal shall constitute grounds for the suspension or revocation of such license. The information obtained in the course of any examination or inspection shall be confidential and privileged, except for use in a criminal investigation or prosecution. Each licensee shall pay to the Commissioner an amount assessed by the Commissioner to cover the direct and indirect cost of such examinations and a proportionate share of general administrative expense, not to exceed Five Hundred Dollars in any calendar year, and in the event a licensee hereunder is also licensed to do business under Chapter 3 of the Texas Credit Code, Chapter 3 of Subtitle 2, Chapter 274, Acts of the 60th Legislature, Regular Session, 1967, in the same place of business licensed hereunder, the aggregate charges for examinations authorized by the said Chapter 3 of the Texas Credit Code and by this Act shall not exceed Five Hundred Dollars in any calendar year.

[Amended by Acts 1977, 65th Leg., p. 878, ch. 329, § 3, eff. May 30, 1977.]

TITLE 81

JAILS

Article

5115.1. Commission on Jail Standards [NEW].

5115c. Intercounty Cooperation Regarding Furnishing and Operating Jail Facilities [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 dor-

mitory 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 legislature 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.

Application of Sunset Act

Sec. 3a. The Commission on Jail Standards is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1987.

¹ Article 5429k.

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 position, 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 supervisory 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 sufficiently 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. Amended by Acts 1977, 65th Leg., p. 1850, ch. 735, § 2.131, eff. Aug. 29, 1977.]

Art. 5115c. Intercounty Cooperation Regarding Furnishing and Operating Jail Facilities

Sec. 1. Two or more counties, acting through their commissioners courts, may contract with one another for the joint operation of a jail to serve the contracting counties. The contract may provide for the construction or acquisition of a facility for this purpose or for the use of an existing facility. The

joint facility is not required to be located at the county seat of one of the contracting counties.

Sec. 2. A county that is party to a contract under this Act may use any method of financing its share of the capital expenditures under the contract for acquisition, construction, enlargement, or improvement of the joint facility, including necessary acquisition of land, as would be available to it if the county operated its own jail, including the issuance as provided by law of general obligation bonds or other evidences of indebtedness.

Sec. 3. (a) The administration of a jail operated under this Act is the responsibility of the sheriff of the county where the jail is located unless he declines that responsibility by filing a written statement to that effect with the commissioners court of that county. If the sheriff so declines, the commissioners courts of the contracting counties by joint action shall appoint a jail administrator for the jail.

(b) The sheriff or jail administrator responsible for the administration of the jail has all the powers, duties, and responsibilities with regard to the keeping of prisoners and operation of the jail that are conferred by law on a sheriff in a county that operates its own jail.

(c) Action by a sheriff declining the responsibility for the administration of a jail operated under this Act does not take effect until a jail administrator has been appointed and has assumed his duties. If there is a vacancy in the position of jail administrator, the sheriff of the county where the jail is located is responsible for the administration of the jail until a new jail administrator is appointed and assumes the position.

[Acts 1977, 65th Leg., p. 1436, ch. 581, §§ 1 to 3, eff. Aug. 29, 1977.]

TITLE 82

JUVENILES

Article

- 5139H-6. Juvenile Boards in 24th and 135th Judicial Districts [NEW].
- 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].
- 5139NNN. Somervell County Juvenile Board [NEW].
- 5139OOO. Juvenile Boards in Carson, Childress, Collingsworth, Donley, and Hall Counties [NEW].

Art. 5139E-1. Smith County Juvenile Board

(1) There is established a Juvenile Board in Smith County to be composed of the County Judge of the county, the District Judges of the Judicial Districts therein and the Judge of the Court of Domestic Relations. 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) [Deleted]

(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 the Judges of the Domestic Relations, County, and District Courts 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; Acts 1977, 65th Leg., p. 1330, ch. 528, § 1, eff. Aug. 29, 1977.]

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-4. Juvenile Boards in Atascosa, Frio, LaSalle, Wilson, and Karnes Counties

In each of the counties of Atascosa, Frio, LaSalle, Wilson, and Karnes, the Judge of each judicial district that includes the county, together with the County Judge of the county, shall constitute the Juvenile Board of such county. The members of such Board in each county shall each be allowed additional compensation of not less than One Thousand, Two Hundred Dollars (\$1,200) per annum and not more than Four Thousand, Eight Hundred Dollars (\$4,800) 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.

[Amended by Acts 1977, 65th Leg., p. 1267, ch. 490, § 1, eff. Aug. 29, 1977.]

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. 5139H-6. Juvenile Boards in 24th and 135th Judicial Districts

In each of the counties comprising the 24th Judicial District and the 135th Judicial District, except Victoria County, the judge of each judicial district having jurisdiction in the county and the county judge of each county constitute the juvenile board of

the county. The members of the board in each of those counties may each be allowed, for additional duties as a member of the board, additional compensation in a reasonable amount to be set by the commissioners court of each county, which shall be paid in 12 equal installments out of the general funds of each county. In no event shall the additional compensation for services rendered on the juvenile board be set lower than that existing on the effective date of this Act. Such compensation shall be in addition to all other compensation now provided or allowed by law for county and district judges. The provisions of this Act do not apply to nor affect the Victoria County Juvenile Board.

[Acts 1977, 65th Leg., p. 1440, ch. 585, § 1, eff. Aug. 29, 1977.]

Art. 5139J. Juvenile Boards in Harrison and Rusk Counties

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

Sec. 2. As compensation for the added duties imposed upon members of each juvenile board, each member thereof may be allowed additional compensation to be determined by the commissioners court of the county and paid monthly in twelve (12) equal installments out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

[See Compact Edition, Volume 3 for text of 3 and 3a]

Sec. 3b. The juvenile board of Rusk County may appoint a juvenile officer whose salary shall be fixed by the Commissioners Court of said county in an amount not less than Three Thousand Dollars (\$3,000) per year. In addition, the Commissioners Court shall fix a reasonable allowance for the expenses of such officer. 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 of the county shall have authority to accept contributions by way of gifts, grants or donations from cities, towns, other political subdivisions, organizations, or individuals, to be used in part payment of the salary and expenses of the juvenile officer. Such gifts, grants, or donations, shall be placed in a special fund and disbursed in payment of the salary and expenses of the juvenile officer as fixed by the order of the Commissioners Court of the county. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer from the special fund established for that purpose and created by contributions or from the general fund of the

county as may be necessary; provided, however, that the total amount payable from all sources to the juvenile officer for salary and expenses in any one year shall not exceed the amount authorized to be paid to such officer by this Section.

[Amended by Acts 1977, 65th Leg., p. 1529, ch. 622, § 1, eff. Aug. 29, 1977.]

Art. 5139Q. Midland County Juvenile Board

Sec. 1. There is a county juvenile board in and for Midland County, which shall be composed of the county judge of Midland County, the judge of each judicial district which includes Midland County, the judge of the court of domestic relations in Midland County, and the judge of the county court at law of Midland County. The official title of the board shall be the Midland County Juvenile Board. The judge of the court which is designated as the juvenile court of the county shall be the chairman of the board and its chief administrative officer.

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

[Amended by Acts 1977, 65th Leg., p. 1628, ch. 640, § 11, eff. Jan. 1, 1978.]

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. 5139Z. Andrews County Juvenile Board

Sec. 1. There is hereby established a Juvenile Board for Andrews County, which shall be known as the Andrews County Juvenile Board. It shall be composed of the county judge of Andrews County, the judge of each judicial district which includes Andrews County, and the county attorney of Andrews County or his successor. The judge of the court which is designated as the juvenile court for Andrews 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 3 for text of 2]

[Amended by Acts 1977, 65th Leg., p. 1789, ch. 717, § 1, eff. June 15, 1977.]

Art. 5139BB. Liberty County Juvenile Board

Sec. 1. There is hereby established a county juvenile board in Liberty County, which shall be composed of the county judge of the County Court of Liberty County, who shall act as juvenile judge if he qualifies under the provisions of Section 51.04, Family Code, to serve as judge of the juvenile court, and two (2) or more citizens of Liberty County, which citizens shall be appointed by the county judge, with the approval of the County Commissioners Court of Liberty County, for a period of two (2) years. If the county judge is not qualified to act as juvenile judge under the Family Code, a district judge having Liberty County within his jurisdiction shall act as the juvenile judge of Liberty County. The official title of the board shall be the Liberty County Juvenile Board.

Sec. 2. As compensation for the added duties imposed upon the juvenile board, the juvenile judge shall be allowed an additional compensation in an amount to be fixed by the Commissioners Court of the County; such other members of the juvenile board shall be allowed additional compensation in an amount to be fixed by the Commissioners Court of the County. The additional compensation provided in this section shall be paid monthly in twelve (12) equal installments out of the general fund or any other appropriate fund of the County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges or any salary now received by said citizen members of the Liberty County Juvenile Board.

Sec. 3. The juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. The board may appoint a juvenile officer and such assistants as may be necessary, whose salary shall be fixed by the Commissioners Court of said Liberty County, Texas. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the juvenile officer and his assistants 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 and his assistants. The same person may serve as the juvenile officer and as a citizen

member of the Liberty County Juvenile Board; however, if a citizen member of the Liberty County Juvenile Board also is appointed to serve as the juvenile officer then he shall receive only the compensation set forth herein for the juvenile officer. All salaries referred to in this amendment shall be effective as of January 1, 1978.

[Amended by Acts 1977, 65th Leg., p. 1178, ch. 451, § 1, eff. Aug. 29, 1977.]

Art. 5139CC. Hunt County Juvenile Board

Sec. 1. There is hereby established a County Juvenile Board in Hunt County, which shall be composed of the county judge, the judge of the county court at law in Hunt County, the judge of the 196th Judicial District, and three non-salaried members who are citizens of Hunt County, one to be appointed by the county judge, one by the judge of the county court at law, and one by the district judge. The terms of office of the non-salaried appointed members of the Board are for one year each. The terms of the non-salaried appointed members expire on December 31st of each year.

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

Sec. 4. As compensation for the added duties imposed upon the judicial members of the Juvenile Board, the judges of the county court, county court at law, and district court may be allowed additional compensation not to exceed Three Thousand, Six Hundred Dollars (\$3,600) per year, and the clerk of the juvenile court may be allowed additional compensation not to exceed Eight Hundred Dollars (\$800) per year. Any additional compensation allowed shall be fixed by the Commissioners Court of Hunt County, and paid monthly in twelve (12) equal installments out of the general fund or any other available fund of the county. Such compensation shall be in addition to all other compensation not provided or allowed by law for the county judges, district judges, judges of the county court at law, and clerk of the juvenile court and shall not be counted as fees of office. Each other member of the Board serves without compensation. This Act shall be cumulative of existing laws relating to compensation for judges of district courts, county courts, and county courts at law, and clerks of juvenile courts. [Amended by Acts 1977, 65th Leg., p. 1356, ch. 537, § 1, eff. June 15, 1977.]

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 sup-

port 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

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. 5139BBB. Nueces County Juvenile Board

[See Compact Edition, Volume 3 for text of 1 to 14]

Compensation of Board Members; Payment

Sec. 15. The members of the Nueces County Juvenile Board, in consideration of the additional duties imposed upon them, shall receive additional annual compensation of not less than \$4,200 nor more than \$8,000, as determined by the commissioners court. The compensation provided for in this section shall be paid by the commissioners court and is in addition to all other compensation allowed by law to such officers; provided that the compensation herein provided shall be the sole and only compensation which may be paid to members of the juvenile board in consideration of their services on such Board, such compensation to be in lieu of any com-

compensation for such services which may be provided by other statutory provisions concerning juvenile boards.

[See Compact Edition, Volume 3 for text of 16 and 17]

[Amended by Acts 1977, 65th Leg., p. 1758, ch. 706, § 1, eff. Sept. 1, 1977.]

Sections 2 and 3 of the 1977 Act provided as follows:
 "Sec. 2. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict."
 "Sec. 3. This Act shall be effective on and after September 1, 1977."

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 county. 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, the judge of the County Court at Law 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. Amended by Acts 1977, 65th Leg., p. 670, ch. 252, § 1, eff. May 25, 1977.]

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. 5139NNN. Somervell County Juvenile Board

Sec. 1. The county judge of Somervell County and the judge of the judicial district which includes Somervell County shall constitute the juvenile board of that county. The judge of the court which is designated as the juvenile court of Somervell 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 and district judge or judges who are members of the board may, if approved by the commissioners court of the county, be compensated by an annual salary to be set by the commissioners court, payable in 12 equal monthly installments out of the general fund or any other available fund of Somervell County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county and district judges.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.

Sec. 4. The Juvenile Board of Somervell County shall appoint a juvenile officer for Somervell County, who shall meet all the qualifications and perform

all the duties of a juvenile officer as prescribed by the laws of this state. The juvenile officer shall be paid a salary to be fixed by the commissioners court and to be paid out of the general fund or any other available fund of Somervell County. The juvenile board by majority vote shall have the power to hire and discharge any appointee and such action need not be approved by the commissioners court.

[Acts 1977, 65th Leg., p. 890, ch. 334, §§ 1 to 4, eff. Aug. 29, 1977.]

Art. 5139000. Juvenile Boards in Carson, Childress, Collingsworth, Donley, and Hall Counties

Sec. 1. There is hereby established a county juvenile board in Carson County, Childress County, Collingsworth County, Donley County, and Hall County, which shall be composed of the county judge and the judge of the judicial district which includes the county. The official title of the board shall be the name of the county followed by the words, "County Juvenile Board." The judge of the court which is designated as the juvenile court of the county shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the duties imposed on members of each juvenile board, each member shall be paid compensation of not less than \$50 per month and not more than \$150 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, Revised Civil Statutes of Texas, 1925, as amended, and any amendments thereto. Each board may, with the concurrence of the commissioners court, appoint a juvenile officer whose salary shall be fixed by the commissioners court. The juvenile officer shall have the powers and duties prescribed by Article 5142, Revised Civil Statutes of Texas, 1925, as amended, and any amendments thereto. All claims for expenses of the juvenile officer in each county shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of that juvenile officer. Providing funding for the payment of the salary and expenses of the juvenile officer shall be within the discretion of the commissioners court of each county.

[Acts 1977, 65th Leg., p. 1239, ch. 478, §§ 1 to 3, eff. June 15, 1977.]

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 Wich-

ita 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 succeed-

ing 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 com-

plainant 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 investigation 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. 5142c-1. Juvenile Officers for Counties Within 23rd and 130th Judicial Districts

[See Compact Edition, Volume 3 for text of 1 to 7]

Child Support Office

Sec. 7a. (a) Notwithstanding any other provision of this Act, the judges of the District Courts and Domestic Relations Courts in each of the counties of Brazoria, Fort Bend, Matagorda, and Wharton may create a child support office in the juvenile office of the county to receive payments for the support of children made under the order of a District Court or Domestic Relations Court. A child support office may serve more than one county. The child support office shall receive the payments and shall disburse the funds in the manner the court determines to be for the best interest of the parties involved in each case.

(b) The judges of the District Courts and Domestic Relations Courts may appoint an administrator and such assistants as in their judgment may be necessary for a term of two years. The judges of the District Courts and Domestic Relations Courts shall determine the duties to be assigned the administrator and his assistants and the salaries of the personnel of the child support office to be paid in equal monthly installments out of the general fund of the county, the child support fund, or other available fund. All claims for expenses of the administrator and his assistants and administrative expenses for operation of the child support office, including all necessary equipment and supplies, shall, before payment, be approved by the judges.

(c) If a child support office serves more than one county, the judges of the District Courts and the Domestic Relations Courts in those counties shall determine the location of the child support office. The powers and duties of the county officials and

employees prescribed in this section shall be performed by the officials and employees of the county in which the child support office is located. The counties served by the child support office shall pay the salaries of the personnel, premiums for a bond, and other expenses in accordance with the proportion that the population of each county bears to the total population of all counties served by that office.

(d) Each administrator of a child support office shall make a surety bond in a solvent surety company authorized to make such bonds in Texas, conditioned on the faithful performance of the duties of his position and further conditioned on his properly accounting for the money entrusted to him. The bond shall be in an amount to be fixed by the County Auditor and subject to approval of the County Auditor. The county shall pay the premiums for the bond out of the general fund, the child support fund, or other available fund.

(e) Each child support office shall keep an accurate and complete record of its receipts and disbursements of support payment funds. The record is open to inspection by the public. It is the duty of the County Auditor or other duly authorized person in each county with a child support office to inspect and examine the records and audit the accounts quarterly and to report his findings and recommendations to the judges.

(f) A service fee for receiving and disbursing payments, not to exceed \$1 per month, shall be assessed each payor or payee of child support who is ordered by a court to pay support to a child support office. However, if the payor is a member of the armed services and the monthly payments for child support exceed the amount ordered by the court, the recipient (payee) of the support payments shall be the person responsible for paying the service fee into the child support office. The service fee applies to all support payments ordered paid to a child support office after the effective date of this amendment and to all other such payments, even though ordered prior to the effective date of this amendment, when the person ordered to make such payments has defaulted and has been cited for contempt of court. The service fee shall be collected by the child support office from the payor annually in advance and shall be paid to the county treasurer on the last day of each calendar month, to be kept in a separate account to be known as the "Child Support Fund." This fund shall be administered by the judges of the District Courts and Domestic Relations Courts, subject to the approval of the Commissioners Court, for the purpose of assisting in the payment of the salaries and operating expenses of the child support office. The first service fee shall be due on the date the payor of support payments has been ordered by the court to commence payments for child support and thereafter on each succeeding annual anniversary.

ry of the original court order for payment. In those instances where the payee is charged with the responsibility of making the service fee payments, the first payment shall be due on the date of receipt of the initial support payment and annually thereafter on the anniversary of the date of the receipt of the first support allotment check so long as the payor is a member of the armed services and so long as support allotment payments exceed the amount of support ordered by the court. Failure or refusal of a person to pay the service fee on time and in the amount ordered by the court shall make that person susceptible to an action of contempt of court. A record shall be kept of all service fees collected and expended. The Child Support Fund is subject to regular audit by the County Auditor or other duly authorized person. Annual reports of receipts and expenditures in this account shall be made to the Commissioners Court.

[See Compact Edition, Volume 3 for text of 8 and 9]

[Amended by Acts 1977, 65th Leg., p. 2069, ch. 821, § 1, eff. Aug. 29, 1977.]

Art. 5143c. Repealed by Acts 1977, 65th Leg., p. 108, ch. 52, § 1, eff. April 5, 1977.

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)]

(h) The Texas Youth Council is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the council is abolished, and this Act expires effective September 1, 1987.

¹ Article 5429k.

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 recommenda-

tions 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 9]

Admission of Children

Sec. 9a. Subject to such policies as the Texas Youth Council may adopt, the Corsicana State Home, the West Texas Children's Home at Pyote, and the Waco State Home may accept for admission any child between the ages of three (3) years and eighteen (18) years who is a full orphan, a half-orphan, or a dependent and neglected child, and may offer, if needed, care, treatment, education, and training to such children as are admitted thereto until they have reached the age of eighteen (18) years. When a person under the care of a home named in this section attains the age of eighteen (18) years, he may exercise an option to remain at the home if he is a full-time or part-time student at an accredited or licensed college or university, junior college, vocational and technical school, business school, or institution of secondary education and if the home determines that room for him is available. A person who exercises an option to remain at the home is entitled to stay until he reaches the age of twenty-one (21) years, is no longer enrolled in an educational or vocational institution described in this section, or chooses to leave the home. A person who has reached the age of eighteen (18) years and who has left a home named in this section may not return to live there.

[See Compact Edition, Volume 3 for text of 10 and 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) Repealed by Acts 1977, 65th Leg., p. 1869, ch. 744, § 1, eff. Aug. 29, 1977.

(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; Acts 1977, 65th Leg., p. 327, ch. 158, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.143, eff. Aug. 29, 1977.]

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

Article

5144a. Application of Sunset Act [NEW].

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. 5144a. Application of Sunset Act

The office of Commissioner of Labor and Standards is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished effective September 1, 1989.

[Added by Acts 1977, 65th Leg., p. 1855, ch. 735, § 2.167, eff. Aug. 29, 1977.]

¹ Article 5429k.

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 10]

Mental Health and Retardation Department Patient-Student Workers

Sec. 10a. Patients and students who are clients of any facility of the Texas Department of Mental Health and Mental Retardation, whose productive

capacity is impaired and who are assisting in the operation of the institutions as part of their therapy, or who are receiving occupational training in sheltered workshops or other programs operated by the Texas Department of Mental Health and Mental Retardation, where the institution or department derives an economic benefit from their services, may be compensated for such services at a percentage of the base wage, which percentage corresponds to the percentage of their productive capacity when compared with employees not so impaired performing the same or similar tasks. The Texas Department of Mental Health and Mental Retardation shall promulgate rules for determining said base wage and said percentage of productive capacity of such clients and such other rules as may be necessary to fulfill the provisions of this section of the Act. It is the specific intent of the legislature that this provision be enacted in order to prevent the curtailment of appropriate occupational training or therapeutic opportunities for such clients. To further such purpose, it is specifically provided that the services rendered and the payment provided for such services herein shall not be construed to create an employer-employee relationship between the Texas Department of Mental Health and Mental Retardation and the patients and students engaged in such training, therapeutic or rehabilitative services.

[See Compact Edition, Volume 3 for text of 11 to 16]

[Amended by Acts 1975, 64th Leg., p. 1237, ch. 462, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 269, ch. 130, § 1, eff. May 11, 1977.]

Section 2 of the 1977 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 provision or application, and to this end the provisions of this Act are declared to be severable."

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 \$25,000 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, but no governmental authority may require a bond if the contract does not exceed the sum of \$25,000. 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; Acts 1977, 65th Leg., p. 2028, ch. 809, § 1, eff. Aug. 29, 1977.]

CHAPTER FIVE. HOURS OF LABOR

Art. 5165a. Weekly Working Hours of State Office Employees

Sec. 1. All state employees who are employed in the offices of state departments or institutions or agencies, and who are paid on a fulltime salary basis, shall work forty (40) hours a week. Provided, however, that the administrative heads of agencies whose functions are such that certain services must be maintained on a twenty-four (24) hours per day basis are authorized to require that essential employees engaged in performing such services be on duty for a longer work-week in necessary or emergency situations. Provided further that the provisions of this Act do not apply to houseparents who are employed by and who live at the facilities of the Texas Youth Council.

[See Compact Edition, Volume 3 for text of 2]
 [Amended by Acts 1977, 65th Leg., p. 315, ch. 148, § 1, eff. May 13, 1977.]

CHAPTER NINE-A. OCCUPATIONAL SAFETY

Art. 5182a. Occupational Safety

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

Occupational Safety Board

Sec. 4.

[See Compact Edition, Volume 3 for text of 4(a) to (c)]

(d) The Occupational Safety Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1985.

¹ Article 5429k.

[See Compact Edition, Volume 3 for text of 5 to 16]

[Amended by Acts 1977, 65th Leg., p. 1848, ch. 735, § 2.115, eff. Aug. 29, 1977.]

CHAPTER TEN. INDUSTRIAL COMMISSION

Article

- 5183a. Application of Sunset Act [NEW].
- 5186a. Minority Business Enterprise Division [NEW].
- 5190.3. Small Business Assistance Act of 1975 [NEW].
- 5190.4. Metric System Advisory Council [NEW].
- 5190.5. Act for Development of Employment and Industrial Resources of 1977 [NEW].

Art. 5183a. Application of Sunset Act

The Industrial Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1983.

[Added by Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.057, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 5186a. Minority Business Enterprise Division

Sec. 1. The Minority Business Enterprise Division is established as a division of the Texas Industrial Commission. The Office of Minority Business Enterprise within the Texas Industrial Commission is abolished and all the powers, duties, and functions of the Office of Minority Business Enterprise are transferred to the Minority Business Enterprise Division.

Sec. 2. The Minority Business Enterprise Division shall be under the direction of a director for Minority Business Enterprise who shall serve under the direction and at the pleasure of the executive director of the Texas Industrial Commission.

Sec. 3. The division shall be responsible to the Texas Industrial Commission for the encouragement, support, and development of minority business ownership throughout the state. The division is authorized to cooperate with the federal government and with any political subdivisions of the state in research designed to encourage minority business ownership and to accept any federal funds available for this purpose.

[Acts 1977, 65th Leg., p. 2074, ch. 825, § 1, eff. Aug. 29, 1977.]

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 encourage 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 (g)]

(h) "Rural area" means an area which is predominately rural in character, being one which the Commission after public hearing defines and declares to be a rural area in that it (1) sustained out-migration of population between the then last two federal censuses, or (2) an area that sustained a gain in population less than the average for standard State statistical metropolitan areas between the then last two federal censuses, or (3) an area in which manufacturing employment is less than the average for standard State statistical metropolitan areas according to the then preceding federal census, or (4) an incorporated city with a population of less than 20,000 according to the then preceding federal census; provided, however, no area of the State shall be included in more than one rural area, nor shall any one rural area contain territory in more than four counties. Rural areas may be defined and redefined by the Commission from time to time, after public hearing.

[See Compact Edition, Volume 4 for text of 3 to 10]

[Amended by Acts 1975, 64th Leg., p. 626, ch. 257, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1511, ch. 611, § 1, eff. Aug. 29, 1977.]

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 annually 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.]

Art. 5190.4. Metric System Advisory Council

[Text of article effective until August 31, 1983]

Definitions

Sec. 1. As used in this Act:

(1) "advisory council" means the Metric System Advisory Council;

(2) "metric system" means the International System of Units as established by the General Conference of Weights and Measures in 1960 and interpreted or modified for the United States by the United States Secretary of Commerce.

Advisory Council

Sec. 2. There is created within the Industrial Commission a Metric System Advisory Council.

Membership; Appointment; Vacancies

Sec. 3. (a) The advisory council consists of 12 appointed members and an ex officio member. The executive director of the Industrial Commission shall be an ex officio member with no voting privileges and shall serve as executive secretary. The members shall be appointed by the governor, with the advice and consent of two-thirds of the membership of the senate, on the following basis:

(1) one member representing the Central Education Agency;

(2) one member representing all other state agencies of the executive branch except the Central Education Agency;

(3) one member representing the Office of the Governor;

(4) one member representing trade and labor organizations;

(5) one member representing universities and colleges;

(6) one member representing private small businesses and industries with less than 100 employees and less than \$1,000,000 annual gross sales;

(7) one member representing private businesses and industries which do not fit into category six;

(8) one member representing consumer interests;

(9) four members to be appointed at large at the discretion of the governor.

(b) Each member is appointed to serve a term of two years.

(c) If a vacancy occurs on the advisory council, the governor shall appoint a member to serve the unexpired term.

Officers; Meetings; Quorum

Sec. 4. (a) The advisory council shall elect a chairman from its membership.

(b) The advisory council shall meet four times annually in Austin, once in each quarter of the calendar year, at the call of the chairman.

(c) Seven members constitute a quorum of the advisory council. A majority of the members of a subcommittee of the advisory council constitutes a quorum of the subcommittee.

Expenses of Members

Sec. 5. (a) Members of the advisory council receive no salary for their services on the advisory council.

(b) Members of the advisory council are entitled to reimbursement for actual and necessary expenses incurred in attending a meeting of the advisory council. The total amount of reimbursement, excluding that for travel, shall not exceed the amount allowed for employees of the Industrial Commission at the time the expenses are incurred. Reimbursement for travel is at the same rate as for employees of state agencies, and reimbursement is allowed only for travel between the meeting and the home of the member.

(c) An advisory council member who is not employed by and does not represent a unit of state government on the advisory council shall be reimbursed by the Industrial Commission. A member who is employed by and represents a unit of state government on the advisory council shall be reimbursed by the unit of government with which the member is employed.

Executive Director; Staff

Sec. 6. The advisory council may employ an executive director to supervise the administration of this Act. The executive director may employ additional persons if necessary.

Duties of Advisory Council

Sec. 7. The advisory council shall:

(1) conduct appropriate research to determine the statutory changes that will be required for transition to the metric system;

(2) conduct appropriate research and investigation to determine the problems faced by business, industry, science, engineering, education, labor, consumers, and government agencies at the state and local levels in making a transition to the metric system;

(3) disseminate information to business, industry, science, engineering, labor, education, consumers, and government agencies at the state and local level that pertains to the transition to the metric system;

(4) recommend to the Industrial Commission and the legislature ways to help affected groups or individuals who face problems in making a transition to the metric system;

(5) cooperate with the United States Metric Board where appropriate;

(6) report to the legislature and the governor on the work of the advisory council in January of odd-numbered years; and

(7) perform such other activities as may be deemed necessary to carry out the intent of this Act.

Acceptance of Grants

Sec. 8. The advisory council may accept, on behalf of the state, a gift, grant, or donation from any source, or funds from an agency of the United States, to be used by the advisory council in the performance of its duties.

Expiration and Abolishment

Sec. 9. This Act expires and the Metric System Advisory Council is abolished on August 31, 1983. [Acts 1977, 65th Leg., p. 1380, ch. 552, §§ 1 to 9, eff. Aug. 29, 1977.]

Art. 5190.5. Act for Development of Employment and Industrial Resources of 1977

[Text of article conditioned on constitutional amendment]

Short Title

Sec. 1. This Act may be cited as the Act for Development of Employment and Industrial Resources of 1977.

Definitions

Sec. 2. When used in this Act, unless otherwise apparent from the context:

(a) "City" means any municipality of this state incorporated under the provisions of (i) any general or special law, provided the municipality has the power to levy an ad valorem tax of not less than \$1.50 on each \$100 valuation of taxable property therein, or (ii) the home-rule amendment to the constitution.

(b) "Commission" means the Texas Industrial Commission.

(c) "Cost" as applied to a project means acquisition of all land, rights-of-way, property rights, easements, and interests acquired for such construction, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for one year after completion of construction, cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of constructing any such project, administrative expense and such other expense as may be necessary or incident to the acquisition thereof, the financing of such acquisition, and the placing of the same in operation.

(d) "County" means a political subdivision of the State of Texas created and established under Article IX, Section 1, of the Texas Constitution.

(e) "Governing body" means the board, council, commission, or legislative body of the issuer.

(f) "Issuer" means a city or county.

(g) "Lessee" means a corporation established under the Texas Non-Profit Corporation Act that incurs a contractual obligation with an issuer as the lessor.

(h) "Project" means the land, buildings, equipment, facilities, and improvements (one or more) found by the governing body to be required or suitable for the promotion of industrial development and for use by manufacturing or industrial enterprise, irrespective of whether in existence or required to be acquired or constructed after the making of such finding by the governing body.

(i) "Ultimate lessee" means the person, firm, corporation, or company which leases a project from a lessee.

Powers of Issuer

Sec. 3. In addition to any other powers which it may now have, each issuer shall have the following powers:

(1) to acquire, whether by construction, purchase, devise, gift, or lease, or any one or more of such methods, one or more projects located within this state and within or partially within its limits, provided that as to a city such project may be situated outside its territorial limits if within its extraterritorial jurisdiction as provided by the Municipal Annexation Act;¹

(2) to lease to a lessee any or all of its projects for such rentals and upon such terms and conditions as the governing body may deem advisable and as shall not conflict with the provisions of this Act;

(3) to issue revenue bonds for the purpose of defraying all or part of the cost of acquiring or improving any project and to secure the payment of such bonds as provided in this Act;

(4) to sell and convey all or any part of any real or personal property acquired as provided by Subdivision (1) of this section, and make such order respecting the same as may be deemed conducive to the best interest of the issuer. No issuer shall have the power to operate any project as a business or in any manner except as the lessor thereof, nor shall it have any power to acquire any such project or any part thereof by the exercise of eminent domain. Land previously acquired by an issuer in the exercise of the power of eminent domain may be sold, leased, or otherwise utilized under the provisions of this Act, provided the governing body determines (a)

that such use will not interfere with the purpose for which such land was originally acquired or is no longer needed for such purpose, and (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 authority of Article 1112, Revised Civil Statutes of Texas, 1925, as amended.

¹ Article 970a.

Bonds Payable Only from Revenues

Sec. 4. Bonds issued under the provisions of this Act shall not be deemed to constitute a debt of the state, the issuer, or of any other political subdivision or agency of this state or a pledge of the faith and credit of any of them, but such bonds shall be payable solely from the funds herein provided therefor from revenues. There shall be printed in each bond a statement to the effect that neither the issuer nor any political subdivision or agency of the state shall be obligated to pay the same or the interest thereon except from revenues of the particular project for which the bonds are issued, and that neither the faith and credit nor the taxing power of the state, the issuer, or any political subdivision or agency thereof is pledged to the payment of the principal of or the interest on such bonds. The issuer shall not be authorized to incur financial obligations which cannot be paid from revenues realized from the lease of a project.

Approval of Project; Rules and Regulations; Appeals

Sec. 5. No issuer shall institute proceedings to authorize bonds under the provisions of Section 6 of this Act until the commission has given final approval of the project by the approval of (1) financial responsibility of the ultimate lessee and (2) the contents of any lease agreement, and the securities shall not be offered for sale until the issuer has complied with the requirements of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes).

The commission shall prescribe rules and regulations setting forth minimum standards for lease agreements and guidelines with respect to financial responsibilities of the lessee and ultimate lessee, if any, but in no event shall the commission give final approval to any project unless it affirmatively finds the lessee and ultimate lessee have the business experience, financial resources, and responsibility to provide reasonable assurance that all bonds and interest thereon to be paid from or by reason of such agreement will be paid as the same become due.

Appeal from any adverse ruling or decision of the commission under this section may be made by an issuer to the district court of Travis County. The substantial evidence rule shall apply.

Rules, regulations, and guidelines promulgated by the commission and amendments thereto shall be effective only after they have been filed with the secretary of state.

Resolution of Intention to Issue Bonds; Notice; Protest; Election; Issuance and Delivery

Sec. 6. (a) Before issuing any bonds hereunder the governing body shall adopt a resolution declaring its intention to do so, stating the amount of bonds proposed to be issued, the purpose for which the bonds are to be issued, and the tentative date upon which the governing body proposes to authorize this issuance of such bonds. Notice of such intention shall be published once a week for at least two consecutive weeks in at least one newspaper of general circulation in the territorial limits of the issuer. The first publication shall be made not less than 14 days prior to the tentative date fixed in such resolution for the authorization of the bonds. In cities and counties with a population of 300,000 or more people, according to the last federal census, notice of such intention shall be published once a week for at least three consecutive weeks in at least one newspaper of general circulation in the territorial limits of the issuer, and the first publication shall be made 45 days prior to the tentative date fixed in such resolution for the authorization of the bonds. If 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 bonds on or before the tentative date specified for the authorization of such bonds, then an election on the question of the issuance of such bonds shall be called and held as herein provided.

If no such protest is filed, then such bonds may be issued without an election at any time within a period of two years after the tentative date specified in the resolution; provided, however, the governing body of such 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.

(b) Where an election is called, notice thereof shall be published once a week for at least two consecutive weeks in at least one newspaper of general circulation within the territorial limits of the issuer. The first publication of such notice shall be made not less than 14 days prior to the date fixed for such election. The election shall be conducted in accordance with the general laws of Texas pertaining to general elections, except as modified by the provisions of this Act. The order calling the election shall specify the date, 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 Texas Election Code. Only qualified electors of the issuer shall be permitted to vote at such election.

The form of ballot shall be in conformity with Sections 61, 62, and 63, Texas Election Code, as amended (Articles 6.05, 6.06, and 6.07, Vernon's Texas Election Code), so that ballots provide for voting for or against the proposition: "The issuance of revenue bonds for the project." The ballots shall also state the amount of bonds to be voted on by the qualified electors and to be issued by the issuer.

Within 10 days after such election is held or as soon thereafter as possible, the governing body of the issuer shall convene and canvass the returns of the election, and in the event such election results are favorable (majority vote) to the proposition, such governing body shall so find and declare and shall be authorized to proceed with the authorization of bonds.

(c) A series of bonds may be issued for each project and any of such projects may be combined in a single series of bonds if the governing body, in the exercise of its discretion, deems the same to be in the best interest of the issuer, but each project shall be considered separately with respect to the provisions of Section 5 and Subsections (a) and (b) of this section.

(d) Bonds shall be issued and delivered within three years of the approval of the commission or within three years of the final judgment in any litigation affecting the validity of the bonds or the provision made for their payment, whichever date is later. Nothing herein shall be construed as prohibiting the commission from conditioning its approval of the project upon the completion of the financing thereof within a lesser period of time.

Revenue Bonds

Sec. 7. Each issuer is hereby authorized to provide by order or ordinance, from time to time, for the issuance of revenue bonds for the purpose of paying all or any part of the cost of acquiring, constructing, enlarging, or improving a project. The principal of and the interest on such bonds shall be payable solely from the funds provided for such payment and from the revenues of the particular project for which such bonds were authorized. No money raised or to be raised from sources other than from the lease of a project shall be used to pay the principal of or interest on any revenue or refunding bonds or interim notes issued under this Act. The bonds of each issue shall be dated, shall bear interest at such rate or rates, 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 fixed by the issuer prior to the issuance of the bonds.

The issuer shall determine the form of the bonds, including any interest coupons to be attached there-

to, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within the state. Provision may be made for execution of the bonds and coupons (if any) under the provisions of Chapter 204, Acts of the 57th Legislature, Regular Session, 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 or coupons shall cease to be such officer before the delivery of such bonds, 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 may be issued in coupon or in registered form or both, as the issuer may determine, and provisions may be made for the registration of any coupon bonds as to the principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. If the duty of such reconversion is imposed on the trustee in a trust agreement, the substituted coupon bonds need not be reapproved by the Attorney General of Texas, and they shall remain incontestable. The issuer may sell bonds at a rate not to exceed that permitted by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k-2, Vernon's Texas Civil Statutes), and such bonds shall be sold for cash (not exchanged for property).

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the project for which issued and shall be disbursed in such manner and under such restrictions, if any, provided in the order or ordinance authorizing their issuance or in the trust agreement securing the same. If the proceeds of the bonds of any issue shall exceed the cost of the 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 used to purchase bonds in the open market.

Prior to the preparation of definitive bonds, the issuer may under like restrictions issue interim notes or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. Bonds may be issued and leases entered into under the provisions of this Act without obtaining the consent or approval of any department, division, commission, board, bureau, or agency of the state, except examination and approval of the attorney general and the Texas Industrial Commission as provided in this Act, and compliance with The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes).

Before any issuer may deliver any bonds, including interim notes or temporary bonds, authorized hereunder to the purchaser thereof, the proceedings

authorizing their issuance and securing the bonds shall be presented to the Attorney General of Texas for examination and approval. If the bonds shall have been duly authorized in accordance with the constitution and laws of the state and constitute valid and binding obligations of the issuer, according to their tenor and effect, and proper revenues have been pledged to their payment, he shall approve the bonds. Without such approval the bonds cannot be so issued and delivered to the purchaser. The bonds when approved shall be registered by the Comptroller of Public Accounts of the State of Texas. After such approval and registration the bonds shall be incontestable.

Revenue Refunding Bonds

Sec. 8. An issuer is hereby authorized to provide by order or ordinance for the issuance of its revenue refunding bonds for the purpose of refunding any bonds then outstanding, issued on account of a project, which shall 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 and, if deemed advisable by the issuer, for the additional purpose of constructing improvements, extensions, or enlargements to the project in connection with which the bonds to be refunded shall have been issued. The issuance of such bonds, 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 may be issued in exchange for outstanding bonds or may be sold and the proceeds used for the purpose of redeeming outstanding bonds.

Trust Agreement

Sec. 9. Any bonds 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. Any such trust agreement may pledge or assign lease revenues to be received from a lessee or ultimate lessee.

The trust agreement may evidence a pledge of the lease income to be received for the use of any project for the payment of principal of and interest on such bonds as the same shall become due and payable and may provide to create and maintain reserves for such purposes. Any such trust agreement or order or ordinance providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper

and not in violation of law, including covenants setting forth the duties of the issuer or lessee in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the project in connection with which such bonds shall have been authorized, and the custody, safeguarding, and application of all money. It shall be lawful for any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the issuer. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action by bondholders 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. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of the project.

Default; Option to Purchase

Sec. 10. Any agreement between a lessee and ultimate lessee relating to any project shall be for the benefit of the issuer, as shall any agreement between the issuer and the lessee. Any such agreement shall contain a provision that in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings, mortgage, or instrument, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the project in accordance with such resolution, mortgage, or instrument.

Any mortgage to secure bonds issued thereunder 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 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 secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor.

An issuer may grant a lessee or ultimate lessee an option to purchase all or any part of a project when all bonds of the issuer delivered to provide such facilities have been paid or provision has been made for their final payment, provided during the time the bonds or interest thereon remains unpaid there is no failure to pay the lease rentals at the time and in

the manner as the same become due, provided a payment shall be deemed paid when and as due if no event of default is declared and the payment is made within 15 calendar days after the date it was scheduled to become due. The provisions of this law are procedurally exclusive for authority to convey or grant an option to purchase, and reference to no other law shall be required.

Authority of Governing Body

Sec. 11. Except as limited by the provisions of this law or as limited by the rules, regulations, and guidelines of the commission, each governing body shall have full and complete authority with respect to bonds, lease agreements, and the provisions thereof.

No bonds shall be approved by the attorney general until the commission has given approval as required by Section 5 of this Act, nor shall such bonds be approved if any authorizing proceedings or provisions for security and payment of lease payments are not in conformity with this law.

Contracts; Advertising

Sec. 12. All contracts for construction or purchases involving the expenditure of more than \$3,000 may be made only after advertising in the manner provided by Chapter 163, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes). The provisions of Article 5160, Revised Civil Statutes of Texas, 1925, as amended, relating to performance and payment bonds, shall apply to construction contracts let by the issuer.

Limitation of Acquisition

Sec. 13. Bonds shall not be issued to acquire existing facilities for the purpose of again leasing same to the same industrial concern nor may the issuer acquire or construct any project for any individual, firm, partnership, or corporation, or make or permit any lease to any individual, firm, partnership, or corporation where the effect of such lease shall be to remove lessee's business from one community to another in Texas and it shall be the duty of the commission to investigate such matters before giving its approval of any project.

Public Function; Bonds Tax Free; Security

Sec. 14. In carrying out the purposes of this Act, the issuer will be performing an essential public function, and any bonds issued by it and their transfer and the issuance therefrom shall at all times be free from taxation by the state or any municipality or political subdivision thereof. The leasehold interest in the ultimate lessee shall be subject to ad valorem taxes.

Bonds 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 Business & Commerce Code.

Bonds as Legal Investments

Sec. 15. Bonds approved by the attorney general shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, and guardians, and for any sinking funds of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas. Such bonds 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 shall be lawful and sufficient security for said deposits at their face value when accompanied by all unmatured coupons, if any, appurtenant thereto.

Expenditure of Proceeds

Sec. 16. Proceeds from the issuance of bonds shall be a trust fund and be expended only for the purposes permitted in this Act. No issuer shall be authorized to expend or authorize the expenditure of any of its funds in the furtherance of any project, but may agree to publish the notices and perform the administrative procedures required hereunder at the expense of a lessee or ultimate lessee.

Purpose

Sec. 17. The accomplishment of the purposes of this Act is found to be a public purpose, the same being for the promotion of employment and general welfare of the people of the state.

Effective Date

Sec. 18. This Act shall become effective upon the passage of the constitutional amendment proposed in S.J.R. No. 55 as passed in the regular session of the 65th Legislature.

Severability

Sec. 19. Nothing in this Act shall be construed to violate any provision of the federal or state constitution, 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 issuer shall have the power by resolution to provide an alternative procedure conformable with such constitutions. If any provisions 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.

[Acts 1977, 65th Leg., p. 1705, ch. 679, §§ 1 to 19, eff. upon adoption of S.J.R. No. 55.]

**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, 2, eff. May 13, 1975.]

Art. 5221a-6. Private Employment Agency Law

Sec. 1.

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

(f) Management search consultant means any person who meets the following requirements:

(1) is engaged in the business of identifying, appraising, and recommending an individual or individuals for consideration for an executive or professional position which is salaried at a rate of not less than \$20,000 per year;

(2) is retained by, acts solely on behalf of, and is compensated only by an employer receiving agreed upon progress fees as a search continues, whether or not the search is successfully completed, and where no liability shall accrue to any individual to pay a fee of any kind, directly or indirectly, on account of any service performed by a management search consultant; and

(3) no other activities are carried on by a management search consultant which would be considered an activity of a private employment agency.

(g) "Commissioner" shall mean the Commissioner of the Bureau of Labor Statistics, and he shall administer and enforce the provisions of this Act and the rules and regulations promulgated by the board and in all matters relating to the enforcement of this Act, shall be guided by the instructions and decisions of the board.

(h) "Deputy or inspector" shall mean any person who is duly authorized by the commissioner to act in that capacity.

(i) "Operator" shall mean the individual or individuals who have the responsibility for the day-to-day management, supervision and conduct of a private employment agency; and an operator may manage more than one office.

(j) "Board" shall mean the Texas Private Employment Agency Regulatory Board.

Exceptions

Sec. 2. The provisions of this Act shall not apply to agencies engaged solely in the procurement of employment for public school teachers and administrators; the provisions of this Act shall not apply to any employment agency established and operated by this state, the United States government, or any municipal government of this state; the provisions of this Act shall not apply to any person who may operate a labor bureau or employment office in conjunction with his own business for the sole and exclusive purpose of employing help for his own use within or without this state, nor to any common carrier operating in this state who may operate an employment office in conjunction with his own business for the exclusive purpose of employing help for his own use within or without this state, provided that no fee or other charge or reduction is exacted from the salary or wages of the worker for employment given. If a fee or charge of any kind, either directly or indirectly is exacted from a worker, then said employer is deemed a private employment agency and is subject to the provisions of this Act. The provisions of this Act shall not apply to farmers or stock raisers acting jointly or severally in securing laborers for their own use in this state where no fee is charged or collected, either directly or indirectly for employment given; the provisions of this Act shall not apply to persons acting for members of their own family. The provisions of this Act shall not apply to any person, corporation, or charitable association chartered under the laws of Texas for the purpose of conducting a free employment bureau or agency, nor to any veterans' association or organization or labor union; nor to any nurses' organization operated and conducted by registered nurses for the enrollment of its professional members only for the purpose of providing professional service to the public; the provisions of this Act shall not apply to a labor agency engaged exclusively in the business of procuring common laborers or agricultural workers for employers or any persons engaged exclusively in the business of procuring or attempting to procure jobs for common laborers or agricultural workers; the provisions of this Act shall not apply to any person conducting a business which consists of employing individuals directly for the purpose of furnishing part-time or temporary help to others. The provisions of this Act shall not apply to any person engaged in business as a management search consultant.

Creation and Composition of the Board

Sec. 3.

[See Compact Edition, Volume 4 for text of 3(a) to (i)]

(j) The Texas Private Employment Agency Regulatory Board is subject to the Texas Sunset Act,¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1979.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 4 to 18]

[Amended by Acts 1977, 65th Leg., p. 1834, ch. 735, § 2.014, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1953, ch. 777, §§ 1, 2, eff. Aug. 29, 1977.]

CHAPTER FOURTEEN. UNEMPLOYMENT COMPENSATION

Art. 5221b-1. Benefits

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

(b) Benefit Amount for Total Unemployment: Each eligible individual who is totally unemployed in any benefit period shall be paid with respect to such benefit period, benefits at the rate of one twenty-fifth ($\frac{1}{25}$) of his wages received from employment by employers during that quarter in his base period in which wages were highest, provided that:

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

(2) Such rate shall not be more than Eighty-four Dollars (\$84) per benefit period nor less than Fifteen Dollars (\$15) per benefit period on valid initial claims filed on or after October 1, 1977; provided that if the annual average of the manufacturing production workers average weekly wage in Texas exceeds by Ten Dollars (\$10) the average weekly wage for those workers in 1976 as determined by the Texas Employment Commission and published in its report, "The Average Weekly Wage," the maximum weekly benefit amount shall be increased by Seven Dollars (\$7) and the minimum weekly benefit amount shall be increased by One Dollar (\$1) above the maximum and minimum amounts established herein, the increases to become effective on valid initial claims filed on or after October 1 following publication of "The Average Weekly Wage" report. Thereafter, each cumulative (additional) Ten Dollar (\$10) increase in the average weekly wage for manufacturing production workers in Texas, as annually determined and reported by the Texas Employment Commission, shall cumulatively increase the maximum weekly benefit amount by an additional Seven Dollars (\$7) and the minimum weekly benefit amount by an additional One Dollar (\$1) beginning with the next October 1 following publication of "The Average Weekly Wage" report. The maximum benefit amount payable per benefit period under this section to

any individual on the effective date of a valid claim shall remain the maximum benefit amount payable to that individual until that individual establishes a new benefit year.

[See Compact Edition, Volume 4 for text of (c) and (d)]

(e) **Benefit Wage Credits:** "Benefit wage credits" means those wages as defined in this subsection of the Act, which are used in determining an individual's right to benefits. "Wages" as used in this Section shall be as defined in subsection (n) of Section 19 of this Act,¹ except that the six-thousand-dollar limitation on wages as set out in subsection (n)(1) of Section 19 shall not be applicable for the purposes of this Section 3; provided that, for the purposes of this Section 3, wages received by an individual in any calendar year shall include all remuneration from each employer for employment up to the maximum amount of wages as defined in the Federal Insurance Contributions Act (Section 3121, Chapter 21, Subtitle C, Internal Revenue Code of 1954),² as amended, or as it may hereafter be amended; and provided further, that wages which have been used to qualify an individual for regular benefits under this Act or under any other unemployment compensation law shall not be used again to qualify such individual for regular benefits.

If an employer fails to report wages which were paid to a claimant during a base period when requested by the Commission, the Commission may establish wage credits for such claimant for such base period on the basis of the best information which has been obtained by the Commission.

(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; except that:

(1) with respect to services in an instructional, research, or principal administrative capacity for an educational institution, benefits shall not be payable based on those services for any week commencing during the period between two (2) successive academic years or terms (or, when an agreement provides instead for a similar period between two (2) regular but not successive terms, during that period) to any individual if the individual performs those services in the first of the academic years (or terms) and if there is a contract or reasonable assurance that the individual will perform services in that capacity for any educational institution in the second of the academic years (or terms);

(2) with respect to services in any other capacity for an educational institution (other than an institution of higher education), benefits shall not be payable on the basis of those services to any individual for any week which com-

mences during a period between two (2) successive academic years or terms if the individual performs those services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform those services in the second of the academic years or terms; and

(3) with respect to any services described in Paragraphs (1) and (2), benefits shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(g) **Athletes:** Benefits shall not be payable to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two (2) successive sport seasons (or similar periods) if the individual performed those services in the first of the seasons (or similar periods) and there is a reasonable assurance that the individual will perform those services in the later of the seasons (or similar periods).

(h) **Aliens:** Benefits shall not be payable on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act),³ provided that:

(1) any data or information required of individuals applying for benefits to determine whether or not benefits are payable to them because of their alien status shall be uniformly required from all applicants for benefits; and

(2) in the case of an individual whose application for benefits would otherwise be approved, no determination that benefits are not payable to that individual because of his alien status may be made except on a preponderance of the evidence.

Provided that any modifications to the provisions of Section 3304(a)(14) of the Federal Unemployment Tax Act as provided by Public Law 94-566⁴ which specify other conditions or other effective date for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under state law as a condition for full

tax credit against the tax imposed by the Federal Unemployment Tax Act shall be considered applicable under the provisions of this Section.

(i) **Previously Uncovered Services:** With respect to weeks of unemployment beginning after December 31, 1977, benefit wage credits shall include wages for previously uncovered services, provided that benefit payments based on those services are reimbursable from the federal government in accordance with provisions of Public Law 94-566 and provided that no employer's account shall be charged with payments based on those benefit wage credits either as chargebacks or reimbursements. For the purpose of this subsection, the term "previously uncovered services" means services which were not employment and which were not services for an employer under any provision of this Act at any time during the one-year period ending December 31, 1975, and which constitute employment and services for an employer after December 31, 1977, in accordance with the provisions of Section 19 of this Act as services in agricultural labor, domestic services, services for a governmental employer, or services for a nonprofit educational institution which is not an institution of higher education, except to the extent that assistance under Title II of the federal Emergency Jobs and Unemployment Assistance Act of 1974⁵ was paid on the basis of those services. [Amended by Acts 1975, 64th Leg., p. 897, ch. 334, § 9, eff. June 6, 1975; Acts 1977, 65th Leg., p. 981, ch. 368, §§ 1, 2, eff. Jan. 1, 1978.]

¹ Article 5221b-17(n).

² 26 U.S.C.A. § 3121.

³ 8 U.S.C.A. §§ 1153(a)(7), 1182(d)(5).

⁴ 26 U.S.C.A. § 3304(a)(14).

⁵ Public Law 93-567; see 26 U.S.C.A. § 3304 note.

Sections 20 to 22 of the 1977 amendatory act provided:

"Sec. 20. All laws or parts of laws in conflict herewith, insofar as they do conflict herewith, are hereby repealed, but such repeal may in no way be construed as forfeiting or waiving any rights of the State of Texas or of the Texas Employment Commission which have accrued thereunder, including but not limited to the right to collect contributions, interest, or penalties that have accrued and the right of prosecution for violation of any provision thereof; nor may this repeal in any way be construed as forfeiting or waiving the rights of any individual to benefits which accrued thereunder; provided that the commission's determination of the benefit year, the benefit amount for total unemployment, and the duration of benefits made with respect to an initial claim filed prior to January 1, 1978, shall be effective for the remainder of that benefit year."

"Sec. 21. The amendment to Subsection (b), Section 3, Texas Unemployment Compensation Act, as amended (Article 5221b-1, Vernon's Texas Civil Statutes), contained in Section 1 of this Act takes effect on October 1, 1977. All other provisions of this Act take effect on January 1, 1978."

"Sec. 22. If any provision of this Act is held invalid, the invalidity does not affect any provision of this Act which can be given effect without the invalid provision. Provided further, should any part or parts of Public Law 94-566 or the federal acts it amends be finally adjudged unconstitutional or invalid by any court of competent jurisdiction, then this Act is automatically repealed to the extent of such invalidity."

Art. 5221b-2. Benefit Eligibility Conditions

An unemployed individual shall be eligible to receive benefits with respect to any benefit period only if the Commission finds that:

(a) He has registered for work at, and thereafter has continued to report at, an employment office in accordance with such regulations as the Commission may prescribe;

(b) He has made a claim for benefits in accordance with the provisions of Subsection 6(a) of this Act;¹

(c) He is able to work;

(d) He is available for work;

(e) He has within his base period received benefit wage credits for employment by employers of not less than Five Hundred Dollars (\$500) and has total benefit wage credits in his base period of not less than one and one-half (1½) times his high quarter benefit wage credits in his base period, or within at least one quarter of his base period received wages for employment by employers equal to two-thirds (⅔) of the maximum amount of wages as defined in the Federal Insurance Contributions Act (Section 3121, Chapter 21, Subtitle C, Internal Revenue Code),² as amended, or as it may hereafter be amended, provided that any claimant who has had a prior benefit year must have earned wages of Two Hundred Fifty Dollars (\$250) or more subsequent to the beginning date of the prior benefit year.

(f) Prior to the first payment of benefits following an initial claim he has been totally or partially unemployed for a waiting period of seven (7) consecutive days. No week shall be counted as a waiting period week for the purposes of this Subsection:

(1) Unless he has registered for work at an employment office in accordance with Subsection (a) of this Section;

(2) Unless it is a week following the filing of an initial claim;

(3) Unless he reports at an office of the Commission and certifies that he has met the waiting period requirements herein prescribed for the preceding seven (7) days;

(4) If benefits have been paid or are payable with respect thereto;

(5) If the individual does not meet the eligibility conditions of Subsections (c) and (d) of this Section 4;

(6) If the individual has been disqualified for benefits for such seven (7) day period under the provisions of Subsections (a), (b), (c), or (d) of Section 5 of this Act;³

(7) Provided, notwithstanding any other provision of this Subsection (f), when an individual has been paid benefits in his current benefit year equal to three times his weekly benefit amount, he shall be eligible to receive benefits on his waiting period claim in accordance with the terms of the Act.

[Amended by Acts 1977, 65th Leg., p. 984, ch. 368, § 3, eff. Aug. 29, 1977.]

¹ Article 5221b-4(a).

² 26 U.S.C.A. § 3121.

³ Article 5221b-3.

Art. 5221b-2a. Prohibitions Against Denial of Benefits

[See Compact Edition, Volume 4 for text of
(a) and (b)]

(c) Benefits shall not be denied to an individual solely on the basis of pregnancy or termination of pregnancy.

[Amended by Acts 1977, 65th Leg., p. 985, ch. 368, § 4, eff. Jan. 1, 1978.]

Art. 5221b-3. Disqualification for Benefits

An individual shall be disqualified for benefits:

(a) If the Commission finds that he has left his last work voluntarily without good cause connected with his work. Such disqualification shall be for not less than one (1) nor more than twenty-five (25) benefit periods following the filing of a valid claim, as determined by the Commission according to the circumstances in each case.

(b) If the Commission finds he has been discharged for misconduct connected with his last work. Such disqualification shall be for not less than one (1) nor more than twenty-six (26) benefit periods following the filing of a valid claim, as determined by the Commission according to the seriousness of the misconduct.

(c) If the Commission finds that during his current benefit year he has failed, without good cause, either to apply for available, suitable work when so directed by the Commission or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the Commission. Such disqualification shall be for not less than one (1) nor more than thirteen (13) benefit periods following the failure, as described above to apply for or accept suitable work, the degree of disqualification to be determined by the Commission according to the circumstances in each case.

(1) In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety and morals at the place of performance of his work, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this Act, no work shall be deemed suitable and benefits shall not be denied under this Act to any otherwise eligible individual

for refusing to accept new work under any of the following conditions: (a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) For any benefit period with respect to which the Commission finds that his total or partial unemployment is (i) due to the claimant's stoppage of work because of a labor dispute at the factory, establishment, or other premises (including a vessel) at which he is or was last employed, or (ii) because of a labor dispute at another place, either within or without this State, which is owned or operated by the same employing unit which owns or operates the premises at which he is or was last employed, and supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed; provided that this subsection shall not apply if it is shown to the satisfaction of the Commission that:

(1) He is not participating in or financing or directly interested in the labor dispute; provided, however, that failure or refusal to cross a picket line or refusal for any reason during the continuance of such labor dispute to accept and perform his available and customary work at the factory, establishment, or other premises (including a vessel) where he is or was last employed shall be considered as participation and interest in the labor dispute; and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises (including a vessel) at which the labor dispute occurs, any of whom are participating in or financing or directly interested in the dispute; provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises; and where a disqualification arises from the employee's failure to meet the requirements

of this paragraph (2) of this subsection (d) his disqualification shall cease if he shall show that he is not, and at the time of the labor dispute was not, a member of a labor organization which is the same as, represented by, or directly affiliated with, or that he, or such organization of which he is a member, if any, is not acting in concert or in sympathy with a labor organization involved in the labor dispute at the premises at which the labor dispute occurred, and he has made an unconditional offer to return to work at the premises at which he is or was last employed.

(e) For any benefit period with respect to which he is receiving or has received remuneration in the form of:

(1) Wages in lieu of notice;

(2) Compensation for temporary partial disability, temporary total disability or total and permanent disability under the Workmen's Compensation Law of any State or under a similar law of the United States;

(3) Old Age Benefits under Title II of the Social Security Act as amended,¹ or similar payments under any Act of Congress, or a State Legislature; provided, that if such remuneration is less than the benefits which would otherwise be due under this Act, he shall be entitled to receive for such benefit period, if otherwise eligible, benefits reduced by the amount of such remuneration. If any such benefits, payable under this subsection, after being reduced by the amount of such remuneration, are not an even multiple of One Dollar (\$1), they shall be adjusted to the next higher multiple of One Dollar (\$1).

(f) In determining the number of benefit periods during which any individual is entitled to receive benefits in a benefit year, the Commission shall deduct any period of disqualification as provided in subsections (a), (b), and (c) of this Section from the total number of benefit periods during which he would otherwise be entitled to receive benefits except for such disqualification; provided, that in no case shall the number of benefit periods so deducted exceed the number of benefit periods during which the claimant is then eligible to receive benefits except for such disqualification; and provided further, that in no event shall a disqualification imposed under subsection (a) or (c) of this Section result in a total reduction of the claimant's benefit rights in his benefit year.

(g) For the duration of any period of unemployment with respect to which the Commission finds that such individual has left his most

recent work for the purpose of attending an established educational institution; provided, that this subsection shall not apply during a period in which an individual is in training with the approval of the Commission.

(h) For weeks of unemployment beginning after March 31, 1980, for any benefit period with respect to which the individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of the individual and which is reasonably attributable to that benefit period; provided that if the remuneration is less than the benefits which would otherwise be due under this Act, the individual shall be entitled to receive for that benefit period, if otherwise eligible, benefits reduced by the amount of the remuneration. If those benefits payable under this subsection, after being reduced by the amount of the remuneration, are not an even multiple of One Dollar (\$1), they shall be adjusted to the next higher multiple of One Dollar (\$1).

The Legislature declares that the preceding paragraph is enacted because Section 3304(a)(15) of the Federal Unemployment Tax Act as provided in Public Law 94-566² requires this provision in State law as of January 1, 1978, as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act; and it further declares that if Section 3304(a)(15) is amended to provide modifications of these requirements, the modified requirements, to the extent that they are required for full tax credit, shall be considered applicable under the provisions of this Section rather than the provisions stated in the preceding paragraph.

[Amended by Acts 1977, 65th Leg., p. 985, ch. 368, § 5, eff. Jan. 1, 1978.]

¹ 42 U.S.C.A. § 401 et seq.

² 26 U.S.C.A. § 3304(a)(15).

Art. 5221b-4. Claims for Benefits

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

(b) An unemployed individual who has no current benefit year may file an initial claim in accordance with rules or regulations prescribed by the Commission. The Commission shall mail a notice of the filing of such initial claim to the individual or organization for which the claimant last worked prior to the effective date of the initial claim. If the individual or organization has more than one branch or division operating at different locations, notice of the filing of such initial claim shall be mailed to the branch or division where claimant last worked. Mailing of notice of the initial claim to the correct address of the individual or organization or the branch or division where claimant last worked shall constitute due notice to such individual or organization. If the individual or organization to which such

notice is mailed has knowledge of any facts that may adversely affect such claimant's right to benefits, or that may affect a charge to its account, it shall notify the Commission of such facts promptly. If such individual or organization does not mail or deliver such notification to the Commission within twelve (12) days from the date notice of a claim was mailed to it by the Commission, such individual or organization shall be deemed to have waived all rights in connection with such claim, including any rights it may have under subsection 7(c)(2) of this Act,¹ except with respect to a clerical or machine error as to the amount of its chargeback or maximum potential chargeback in connection with such claim.

The Commission shall determine whether such initial claim is valid. If such initial claim is valid, the Commission shall determine the benefit year, the benefit amount for total unemployment and the duration of benefits. A notice of the determination of the initial claim shall be mailed to the claimant at his last known address as reflected by Commission records. The claimant may within twelve (12) calendar days from the date such notice was mailed request a redetermination or appeal in the manner provided in this Section.

If such individual or organization for which claimant last worked has filed a notification with the Commission in accordance with this Section, an examiner shall make a determination as to whether the claimant is disqualified from receipt of benefits under Section 5 of this Act,² as to any other issue affecting the claimant's right to receive benefits which may have arisen under any other provision of this Act, and as to whether a chargeback shall be made to the account of the individual or organization if benefits are paid, and shall mail a copy of the determination to the claimant and to such individual or organization, or the branch or division for which the claimant last worked. In the absence of such notification from such individual or organization, if, from information on the claim or other information secured, an issue is raised affecting the claimant's rights to benefits under any provision of this Act, an examiner shall prepare a determination reflecting his decision and mail a copy of it to the claimant at his last known address.

Unless the claimant or the individual or organization or branch thereof to which the copy of the determination is mailed files an appeal from such determination within twelve (12) calendar days after such copy of the determination is mailed to his or its last known address as reflected by Commission records, such determination shall be final for all purposes and benefits shall be paid or denied in accordance therewith; provided, that within the same period of time, an examiner may file an appeal from such determination, or may, if he discovers error in

connection therewith or additional information not previously available, reconsider and redetermine any such determination, and such redetermination shall replace such determination and shall become final unless an appeal therefrom is filed by such claimant or such individual or organization within twelve (12) calendar days after a copy of such redetermination was mailed to his or its last known address as reflected by Commission records.

Notwithstanding any provision in this Act under which benefits may be paid or denied, benefits shall be paid promptly in accordance with a determination or redetermination of an examiner, a decision of an appeal tribunal, the Commission, or a reviewing court, on the issuance of that determination, redetermination or decision (regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review, or the pendency of that application, filing, or petition), unless and until that determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied in accordance with the modifying or reversing redetermination or decision. If a determination or decision is finally modified or reversed to deny benefits, no chargeback shall be made to the employer's account by reason of payments made to the claimant for any benefit period with respect to which he is finally denied benefits, and any benefits paid to the claimant which were not in accordance with the final decision shall be refunded by the claimant to the Commission or in the discretion of the Commission shall be deducted from future benefits payable to him under this Act.

[See Compact Edition, Volume 4 for text of (c) to (e)]

(f) Procedure: The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, or other individuals or organizations, and the conduct of hearings and appeals shall be in accordance with rules or regulations prescribed by the Commission for determining the rights of the parties. A full and complete record shall be kept of all proceedings in connection with a disputed claim and all testimony at any hearing upon a disputed claim shall be recorded.

[See Compact Edition, Volume 4 for text of (g) to (i)]

[Amended by Acts 1977, 65th Leg., p. 987, ch. 368, § 6, eff. Jan. 1, 1978.]

¹ Article 5221b-5(c)(2).

² Article 5221b-3.

Art. 5221b-4a. Extended Benefits

(a) Definitions: As used in this Section, unless the context clearly requires otherwise:

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

(2) There is a national "on" indicator for a week if, for the period consisting of that week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded four and five-tenths percent (4.5%). The rate of insured unemployment, for the purposes of this subsection, shall be determined by the Secretary of Labor by reference to the average monthly covered employment for the first four (4) of the most recent six (6) calendar quarters ending before the close of that period.

(3) There is a national "off" indicator for a week if, for the period consisting of that week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (seasonally adjusted) for all states was less than four and five-tenths percent (4.5%). The rate of insured unemployment, for the purposes of this subsection, shall be determined by the Secretary of Labor by reference to the average monthly covered employment for the first four (4) of the most recent six (6) calendar quarters ending before the close of that period.

[See Compact Edition, Volume 5 for text of (a)(4)]

(5) There is a State "off" indicator for this State for a week if the Commission determines, in accordance with the regulations of the United States Secretary of Labor, that, for the period consisting of such week and the immediately preceding twelve (12) weeks, either paragraph (A) or (B) of subdivision (4) is not satisfied. Provided that with respect to benefits for weeks of unemployment beginning after December 31, 1977, the determination of whether there has been a State "on" or "off" indicator beginning or ending any extended benefit period shall be made under this section as if subdivision (4) did not contain paragraph (A) thereof, and as if the figure "four" (4) contained in paragraph (B) thereof were "five" (5); except that, notwithstanding any other provision of this Section, any week for which there would otherwise be a State "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a State "off" indicator.

[See Compact Edition, Volume 4 for text of a(6) to (9)]

(10) "Exhaustee" means an individual who, with respect to any benefit period of unemployment in his eligibility period:

(A) has received, prior to such benefit period, all of the regular benefits that were available to him under this Act or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. Chapter 85) in his current benefit year that includes such benefit period;

Provided, that, for the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to him although, as a result of a pending appeal with respect to wage credits that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits, or

(B) had a benefit year that expired prior to such benefit period and has no, or insufficient, wage credits on the basis of which he could establish a new benefit year that would include such benefit period; and

(C)(i) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, or such other federal laws as are specified in regulations issued by the United States Secretary of Labor, and

(ii) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law, he is considered an exhaustee.

[See Compact Edition, Volume 4 for text of (a)(11), (b) to (f)]

(g) Financing:

[See Compact Edition, Volume 4 for text of (g)(1) to (5)]

(6) Notwithstanding any other provision in this Act, with respect to weeks of unemployment beginning after December 31, 1978, extended benefit payments based on benefit wage credits earned from a state, or any political subdivision thereof, or any instrumentality of any one (1) or more of the foregoing which is wholly owned by one (1) or more states or political subdivisions shall be charged to the employer at the rate of one hundred per cent (100%) rather than at the rate of fifty per cent (50%) as provided for other employers under this Act, and any such employer which is a taxed employer shall receive notice that its maximum potential chargeback may be increased by as much as fifty per cent (50%) rather than twenty-five per cent (25%) as provided for other employers.

(h) Repealed by Acts 1977, 65th Leg., p. 1001, ch. 368, § 19, eff. Jan. 1, 1978.

[Amended by Acts 1975, 64th Leg., p. 1, ch. 1, § 1, eff. Jan. 20, 1975; Acts 1977, 65th Leg., p. 989, ch. 368, §§ 7, 8, 19, eff. Jan. 1, 1978.]

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."

Art. 5221b-5. Contributions

[See Compact Edition, Volume 4 for text of (a) and (b)]

(c) Experience rating:

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

(2)(B) To each employer to whom notice of an initial claim has not already been mailed under subsection 6(b) of this Act,² and whose account is potentially chargeable with benefits as the result of such initial claim and payment of benefits, a notice of his maximum potential chargebacks shall be mailed when benefits are first paid and an opportunity afforded for protest of his potential chargebacks. If any such employer desires to protest his potential chargebacks, he shall, within twelve (12) days after such notice was mailed to him, mail his protest, including a statement of the facts upon which his protest is based, to the Commission at Austin, Texas. Any employer who does not protest his potential chargebacks within twelve (12) days after notice was mailed to him shall be deemed to have waived his right to protest such chargebacks. If a timely protest is filed, the examiner shall promptly decide the issues involved in such protest and shall mail a notice of his decision thereon to the protesting employer. Such decision shall become final twelve (12) days from the date of mailing thereof, unless such employer mails to the Commission at Austin, Texas, a written appeal therefrom within such twelve (12) days. Administrative review hereunder shall be in accordance with Commission rules or regulations, and appeals to the Courts shall be permitted only after such employer has exhausted his administrative remedies (not including a motion for rehearing) before the Commission, and within the time prescribed by subsection 6(h) and subsection 6(i) of this Act³ with respect to Commission decisions on benefits. Venue and jurisdiction of appeals to the Courts with respect to chargebacks shall be the same as venue and jurisdiction of suits to collect contributions and penalties under this Act.

If notice of the claim has been sent previously to the employer under the provisions of Section 6 of this Act,⁴ the employer shall be mailed a notice of the amount of his potential chargeback resulting from the claim, and may, within twelve (12) days from the date such notice was mailed, protest any clerical or machine error as to amounts. Such employer shall be mailed a

decision on such protest and may appeal within twelve (12) days from the date notice of such decision was mailed to him.

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

(5) The replenishment ratio for a calendar year is a quotient, stated to the nearest hundredth, derived from the following numerator and denominator.

The numerator of the replenishment ratio shall be the amount of benefits paid from the Unemployment Compensation Fund during the twelve (12) months ending September 30 of the preceding year after deductions have been made for:

- (A) benefit warrants canceled,
- (B) repayment of benefits which have been overpaid, and
- (C) benefits paid which are repayable from reimbursing employers, the federal government, or any other governmental entity.

The denominator of the replenishment ratio shall be the total amount of chargebacks to the accounts of all taxed employers during the twelve (12) months ending September 30, of the preceding year.

The replenishment ratio for each calendar year shall be determined prior to the due date of the first contribution payment with respect to wages for employment paid in that year and such replenishment ratio thus determined shall not be affected or revised by virtue of any subsequent adjustment of any chargebacks of any employer.

[See Compact Edition, Volume 4 for text of (c)6 to (d)]

(e) Repealed by Acts 1977, 65th Leg., p. 1001, ch. 368, § 19, eff. Jan. 1, 1978.

[Amended by Acts 1977, 65th Leg., p. 991, ch. 386, §§ 9, 19, eff. Jan. 1, 1978.]

² Article 5221b-4(b).
³ Article 5221b-4(h), (i).
⁴ Article 5221b-4.

Art. 5221b-5a. Reimbursements

[See Compact Edition, Volume 4 for text of (a) to (h)]

(i) Authority to Terminate Elections: If any reimbursing employer is delinquent in making reimbursements as provided under this Section, the Commission may terminate such reimbursing employer's election to make reimbursements as of the beginning of the next taxable year and such termination shall be effective for that and the succeeding taxable year.

(j) Bond: In the discretion of the Commission, any reimbursing employer (or group of such employers) that elects to become liable for reimbursements may be required to execute and file with the Commission a surety bond approved by the Commission. The amount of such bond shall be determined in accordance with rules prescribed by the Commission. The Commission may require adjustments to be made in a previously filed bond if it deems such action appropriate. Failure by any reimbursing employer covered by such bond to pay the full amount of reimbursements when due, together with any applicable interest and penalties provided for under this Act, shall render the surety liable on such bond to the extent of the bond, as though the surety was such employer. If any reimbursing employer fails to make bond when directed to do so by the Commission, the Commission may terminate such employer's election to make reimbursements as of the beginning of the next taxable year and such termination shall be effective for that and the succeeding taxable year.

[See Compact Edition, Volume 5 for text of (k) and (l)]

(m) Notwithstanding any other provision in this Act, with respect to benefits paid for weeks of unemployment beginning after December 31, 1978, if the reimbursing employer is a state or political subdivision thereof, or any instrumentality of any one (1) or more of the foregoing which is wholly owned by one (1) or more states or political subdivisions, that employer shall pay one hundred percent (100%) of the extended benefits based on benefit wage credits earned from that employer instead of one-half (½) or fifty percent (50%) as indicated for other employers covered under this Act.

[Amended by Acts 1977, 65th Leg., p. 992, ch. 368, §§ 10, 11, eff. Jan. 1, 1978.]

Art. 5221b-5b. Special Contributions for Governmental Employers

(a) Notwithstanding any provision in this Act to the contrary, after December 31, 1977, a governmental employer subject to the provisions of this Act and which pays contributions shall pay in accordance with the following.

(b) Contributions:

(1) Payments: Contributions shall accrue and become payable by each governmental employer for each calendar year, or portion thereof, in which it is subject to this Act with respect to wages for employment paid during the calendar year or portion thereof. The contributions shall become due and be paid by each such employer to the Commission for the fund in accordance with rules prescribed by the Commission and shall not be deducted in whole or in part from the wages of individuals in the employer's employ.

(2) Rate of Contributions: Each governmental employer shall pay contributions equal to one percent (1%) of the wages paid by the employer with respect to employment during each quarter for calendar years 1978 and 1979. The contribution rate for calendar year 1980 shall be a percentage adjusted to the next higher one-tenth of one percent (1/10 of 1%) based on the following numerator and denominator: The numerator shall include all benefits paid during the preceding two (2) calendar years based on wage credits earned from employers which pay contributions under this Section (not including benefit payments which are reimbursable from any other source), and the denominator shall include the total wages paid by all employers which pay contributions under this Section for the same period. The contribution rate for calendar year 1981 and each calendar year thereafter shall be derived in the same manner as for calendar year 1980, except the numerator and denominator shall include benefit payments and wages paid by the employers for only the one calendar year prior to the calendar year for which the rate is computed.

Provided, if the total benefits paid during the period used for determining the rate are greater than the total contributions paid by these same employers for the same period, the amount of benefits paid in excess of the amount of contributions collected for the period shall be added to the numerator in determining the contribution rate, and if the amount of benefits paid for the period is less than the contributions paid by these employers for the same period, that amount shall be deducted from the numerator in computing the rate; provided that in no year shall the contribution rate under this Section be less than one-tenth of one percent (1/10 of 1%).

(3) Interest and Penalties on Past Due Contributions: If any governmental employer shall fail to pay contributions due under this Section on the date on which they are due and payable as prescribed by the Commission, the employer shall be subject to the same penalties as provided for other employers under subsection 14(a) of this Act.¹

(c) Collections:

(1) The provisions for collecting delinquent contributions provided under Section 14 of this Act² shall be applicable with respect to governmental employers.

(2) If any governmental employer is delinquent in payment of contributions or reimbursements under any section of this Act, the Commission shall notify the Comptroller of Public Accounts in writing of the name of the governmental employer and the amount of the delin-

quency. On receipt of this notice, the Comptroller shall pay a sum to the Commission in the amount of the delinquency from any funds which would otherwise be due from the State to the delinquent governmental employer.

(d) Reports: Each governmental employer shall keep such records and file such reports with the Commission with respect to individuals in its employment as the Commission may prescribe by rules. A governmental employer failing to keep or file these reports when due shall be subject to the same penalties as provided for other employers under subsection 14(c) of this Act.³

(e) Separate Accounting: Benefit payments based on wages from employers under this Section shall be paid from the fund; provided the Commission shall establish separate accounting with respect to benefits paid and contributions collected under this Section and these benefits and contributions shall not be used in determining contribution rates under Section 7 of this Act.⁴

[Added by Acts 1977, 65th Leg., p. 992, ch. 368, § 12, eff. Jan. 1, 1978.]

¹ Article 5221b-12(a).

² Article 5221b-12.

³ Article 5221b-12(c).

⁴ Article 5221b-5.

Art. 5221b-6. Duration of Coverage and Elections

[See Compact Edition, Volume 4 for text of (a) and (b)(1)]

(2) A State or an instrumentality thereof may voluntarily elect, for a period of not less than two (2) calendar years, to pay reimbursements for benefits paid or to pay contributions.

(3) A political subdivision of a State or any instrumentality thereof may voluntarily elect for a period of not less than two (2) calendar years to pay reimbursements for benefits paid or to pay contributions.

(4) An election by an employer under subsection 8(b)(2) or 8(b)(3) of this Act to be a reimbursing employer shall be made within forty-five (45) days after the date notice is mailed to the employer that it is subject to the provisions of this Act. The election will be effective January 1 of the year in which the employer became subject to the Act. All elections under subsections 8(b)(2) and 8(b)(3) of this Act may be terminated after the minimum required period by filing with the Commission a written request for termination not later than thirty (30) days preceding the last day of a calendar year, and such termination shall be effective January 1 of the following year.

[See Compact Edition, Volume 4 for text of (b)(5) and (6)]

(c)(1) No employing unit shall cease to be an employer subject to this Act except as of the first day of January of any calendar year, and only then

if such employer files with the Commission, within the period from January 1 through March 31 of such year, a written application for termination of coverage, and the Commission finds that the employing unit was not an employer as defined in subsection 19(f) of this Act¹ during the preceding year.

[See Compact Edition, Volume 4 for text of (c)(2) and (d)]

[Amended by Acts 1977, 65th Leg., p. 994, ch. 368, §§ 13, 14, eff. Jan. 1, 1978.]

¹ Article 5221b-17(f).

Art. 5221b-8. Texas Employment Commission

[See Compact Edition, Volume 4 for text of (a) to (f)]

(g) The Texas Employment Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1983.

[Amended by Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.059, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 5221b-17. Definitions

[See Compact Edition, Volume 4 for text of (a) to (c)]

(d) "Contributions" means the money payments (taxes) to the State Unemployment Compensation Fund required under this Act. Employers who pay contributions under this Act may be referred to as "taxed employers".

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

(f) "Employer" means:

(1) Any employing unit, other than one to which paragraph (3) or (6) below is applicable, which during any calendar quarter in the current calendar year or the preceding calendar year paid wages of One Thousand Five Hundred Dollars (\$1,500) or more, or on each of some twenty (20) days during the current calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least one (1) individual in employment for some portion of the day;

(2) Any individual or employing unit which acquired the organization, trade, or business, or substantially all of the assets thereof, of another which at the time of such acquisition was an employer subject to this Act;

(3) Any employing unit which is a non-profit organization as described in Section 501(c)(3) of the Internal Revenue Code of 1954¹ which is exempt from income tax under Section 501(a) of such Code² and which on each of some twenty (20) days

during the current calendar year or during the preceding calendar year, each day being in a different calendar week, employed four (4) or more individuals in employment for some portion of the day;

(4) Any employing unit which has elected to become an employer under Section 8 of this Act;³

(5) Any employing unit which is liable for the payment of taxes under the Federal Unemployment Tax Act⁴ for the current calendar year;

(6) A state or any political subdivision thereof, or any instrumentality of any one (1) or more of the foregoing which is wholly owned by one (1) or more states or political subdivisions;

(7) Any employing unit not an employer by reason of any other paragraph of this subsection which, as a condition for approval of this Act for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such Act, to be an "employer" under this Act;

(8) Any employing unit which paid wages for or employed individuals in agricultural labor in accordance with the following; notwithstanding any other provision in this Act, agricultural labor as defined in subsection 19(g)(5)(B) of this Act shall constitute employment if performed for any employing unit which during any calendar quarter in the current calendar year or the preceding calendar year paid wages in cash of Twenty Thousand Dollars (\$20,000) or more for such services, or on each of some twenty (20) days during the current calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least ten (10) or more individuals in that employment for some portion of the day; provided that

(A) for purposes of this provision, any individual who is a member of a crew furnished by a crew leader to perform agricultural labor for any other person shall be treated as an employee of the crew leader,

(i) if:

(I) the crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963;⁵ or

(II) substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized

equipment which is provided by the crew leader; and

(ii) if the individual is not an employee of such other person;

(B) for purposes of this provision, in the case of any individual who is furnished by a crew leader to perform agricultural labor for any other person and who is not treated as an employee of the crew leader under paragraph (A) of this subdivision:

(i) the other person and not the crew leader shall be treated as the employer of that individual; and

(ii) the other person shall be treated as having paid cash remuneration to that individual in an amount equal to the amount of cash remuneration paid to that individual by the crew leader (either on his behalf or on behalf of the other person) for the agricultural labor performed for the other person;

(C) for purposes of this provision, the term "crew leader" means an individual who:

(i) furnishes individuals to perform agricultural labor for any other person,

(ii) pays (either on his behalf or on behalf of the other person) the individuals so furnished by him for the agricultural labor performed by them, and

(iii) has not entered into a written agreement with the other person under which the individual is designated as an employee of the other person;

(D) for the purposes of this provision, wages shall not include remuneration paid in any medium other than cash;

(E) this provision shall not be applicable to agricultural labor performed before January 1, 1980, by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act.⁶

(9) Any employing unit which paid wages for domestic service in accordance with the following: notwithstanding any other provision in this Act, domestic service in a private home, local college club, or a local chapter of a college fraternity or sorority shall constitute employment if performed for any employing unit which during any calendar quarter in the current calendar year or the preceding calendar year paid

wages in cash of One Thousand Dollars (\$1,000) or more for the domestic service, provided that an employer under this provision shall not be treated as an employer with respect to wages paid for any service other than domestic service unless the employer is treated as an employer under some other provision of this Act with respect to the service.

[See Compact Edition, Volume 4 for text of (g)(1) to (g)(3)(C)]

(D) The term "employment" shall include any service (other than service which is deemed "employment" under the provisions of subsections (g)(2) and (g)(3) of this Section or the parallel provisions of another state's law) performed after 1971 outside the United States (except in a contiguous country with which the United States has an agreement relating to unemployment compensation) by a citizen of the United States as an employee of an American employer, if:

(i) the employer's principal place of business in the United States is located in this State; or

(ii) the employer has no place of business in the United States, but:

(I) the employer is an individual who is a resident of this State; or

(II) the employer is a corporation which is organized under the laws of this State; or

(III) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this State is greater than the number who are residents of any one (1) other state; or

(iii) none of the criteria of divisions (i) and (ii) of this subparagraph is met but the employer has elected coverage in this State or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this State.

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

(F) The term "United States" when used in a geographical sense includes the States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

[See Compact Edition, Volume 4 for text of (g)(3)(G) and (g)(4)]

(5) The term "employment" shall not include:

(A) Service with respect to which unemployment compensation is payable under an

Unemployment Compensation System established by an Act of Congress; provided that the Commission is hereby authorized to enter into agreements with the proper agencies under such Act of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner provided in subsection 11(b) of this Act¹⁰ for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this Act, acquired rights to unemployment compensation under such Act of Congress, or who have, after acquiring potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this Act.

(B) Agricultural labor, which is hereby defined as all services performed:

(i) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(ii) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(iii) in connection with the production or harvesting of any commodity defined as an agricultural commodity in Section 15(g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, 3; 12 U.S.C. 1141j),¹¹ or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(iv)(I) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half (½) of the commodity with respect to which such service is performed;

(II) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subparagraph (I) above, but only if such operators produced more than one-half ($\frac{1}{2}$) of the commodity with respect to which such service is performed;

(III) the provisions of subparagraphs (I) and (II) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(v) on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(C) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(D) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) years in the employ of his father or mother;

(E) Service performed in the employ of a church, convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(F) Services performed in the employ of a political subdivision or any instrumentality thereof which is wholly owned by one (1) or more political subdivisions:

(i) as an elected official;

(ii) as a member of a legislative body;

(iii) as a member of the judiciary;

(iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or

(v) in a position which, under or pursuant to law, is designated as a major nontenured policy-making or advisory position, or a policy-making or advisory position the performance of the duties of which ordinarily

does not require more than eight (8) hours per week;

(G) Service performed in the employ of a foreign government (including services as a consular or other officer or employee, or a nondiplomatic representative);

(H) Service performed in the employ of an instrumentality wholly owned by a foreign government (i) if the service is of a character similar to that performed in foreign countries by the employees of the United States Government or of an instrumentality thereof; and (ii) if the Commission finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar services performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(I) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to State law;

(J) Service performed by an individual for a person as an insurance agent or an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(K) Service performed by an individual under the age of eighteen (18) years in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(L) Service covered by an arrangement between the Commission and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election are deemed to be performed entirely within such agency's state or under such federal law;

(M) Service performed in the employ of the United States Government or an instru-

mentality of the United States exempt under the Constitution of the United States from the contributions imposed by this Act, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this Act shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services; provided, that if this State shall not be certified for any year by the Social Security Board or successor under Section 1603(c) of the Internal Revenue Code of 1954,¹² the payments required by such instrumentalities with respect to such year shall be refunded by the Commission from the fund in the same manner and within the same period as is provided in subsection 14(j) of this Act¹³ with respect to contributions erroneously collected;

(N) Service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(O) [Deleted]

(P) Service performed in the employ of a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitative or remunerative work;

(Q) Service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training;

(R) Service performed by an inmate of a custodial or penal institution which is owned or operated by the State or a political subdivision thereof;

(S) Service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;

(T) Service performed by an individual under the age of twenty-two (22) who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employing unit, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers; and

(U) Service performed in the employ of a hospital, if such service is performed by a patient of such hospital;

(V) Service performed on a fishing vessel normally having a crew of fewer than ten (10) if the crew member's reimbursement for services performed is a share of the catch and the services are determined not to be employment under the Federal Unemployment Tax Act.¹⁴

[See *Compact Edition, Volume 4 for text of (g)(6) to (j)*]

(k) "State" includes, in addition to the States of the United States of America, Puerto Rico, the District of Columbia, and the Virgin Islands.

[See *Compact Edition, Volume 4 for text of (l) and (m)*]

(n) "Wages" means all remuneration paid for personal services, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include:

(1) That part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to Six Thousand Dollars (\$6,000) with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during any such calendar year;

(2) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents), or for a class or classes of his employees (or

for a class or classes of his employees and their dependents), on account of:

- (A) Retirement, or
- (B) Sickness or accident disability, or
- (C) Medical or hospitalization expenses in connection with sickness or accident disability, or
- (D) Death;

(3) Any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six (6) calendar months following the last calendar month in which the employee worked for such employer;

(5) Any payment made to, or on behalf of, an employee or his beneficiary:

(A) From or to a trust described in Section 401(a) of the Internal Revenue Code of 1954¹⁵ which is exempt from tax under Section 501(a) of said Code¹⁶ at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or

(B) Under or to an annuity plan which, at the time of such payment, is a plan described in Section 403(a) of the Internal Revenue Code of 1954,¹⁷ or

(C) Under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in Section 405(a) of the Internal Revenue Code of 1954;¹⁸

(6) The payment by an employer (without deduction from the remuneration of the employee):

(A) Of the tax imposed upon an employee under Section 3101 of the Internal Revenue Code of 1954¹⁹ (or the corresponding section of prior law);

(7) Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

(8) Any payment (other than vacation or sick pay) made to an employee after the month in which he attains the age of sixty-five (65), if he did not work for the employer in the period for which such payment is made;

(9) Within any calendar year that part of an individual's remuneration from a single employer which, after Six Thousand Dollars (\$6,000) has been paid him upon which contributions have been paid under the unemployment law of any state, is paid with respect to employment.

[See Compact Edition, Volume 4 for text of (o) and (p)]

(q) Repealed by Acts 1977, 65th Leg., p. 1001, ch. 368, § 19, eff. Jan. 1, 1978.

[Amended by Acts 1977, 65th Leg., p. 994, ch. 368, §§ 15 to 19, eff. Jan. 1, 1978.]

¹ 26 U.S.C.A. § 501(c)(3).

² 26 U.S.C.A. § 501(a).

³ Article 5221b-6.

⁴ 26 U.S.C.A. § 3301 et seq.

⁵ 7 U.S.C.A. § 2041 et seq.

⁶ 8 U.S.C.A. §§ 1101(a)(15)(H), 1184(c).

⁷ 26 U.S.C.A. § 3306(c).

⁸ 26 U.S.C.A. § 3306(c)(4).

⁹ Subsection (g)(3)(D) of this article.

¹⁰ Article 5221b-9(b).

¹¹ 26 U.S.C.A. § 1141j, subsec. (g).

¹² 26 U.S.C.A. § 1603(c).

¹³ Article 5221b-12(j).

¹⁴ Subsection (g)(5)(A) of this article.

¹⁵ 26 U.S.C.A. § 401(a).

¹⁶ 26 U.S.C.A. § 501(a).

¹⁷ 26 U.S.C.A. § 403(a).

¹⁸ 26 U.S.C.A. § 405(a).

¹⁹ 26 U.S.C.A. § 3101.

CHAPTER FIFTEEN. INSPECTION OF STEAM BOILERS

Art. 5221c. Boiler Inspection Law

Definitions

Sec. 1. The following terms used in this Act mean:

(1) "Act" or "The Act"—The Boiler Inspection Law.

(2) "Alteration"—A change in a boiler that substantially alters the original design.

(3) "Approved"—Approved by the Commissioner.

(4) "ASME Code"—The American Society of Mechanical Engineers Boiler and Pressure Vessel Code with addenda Code cases, and interpretations adopted by the Council of the Society.

(5) "Authorized Inspector"—Any Inspector of boilers holding a commission issued by the Commissioner pursuant to Section 10 of this Act.

(6) "Board"—The Board of Boiler Rules.

(7) "Boiler"—Any heating boiler, nuclear boiler, power boiler, or unfired steam boiler.

(A) "Power Boiler"—A boiler in which steam is generated at a pressure in excess of 15 psi (103 kPa) or a High-Temperature Water Boiler.

(B) "High-Temperature Water Boiler"—A water boiler intended for operation at pressures in excess of 160 psi (1,103 kPa)

and/or temperatures in excess of 250 degrees F. (121 degrees C.).

(C) "Electric Boiler"—A boiler in which the source of heat is electricity.

(D) "Unfired Steam Boiler"—A steam generating system that includes:

(i) Vessels known as evaporators or heat exchangers.

(ii) Vessels in which steam is generated by the use of heat resulting from operation of a processing system containing a number of pressure vessels such as used in the manufacture of chemical and petroleum products.

(iii) Waste Heat Boilers.

(E) "Miniature Boiler"—Any power boiler which does not exceed the following limits:

(i) Sixteen-inch (406 mm) inside diameter of shell.

(ii) Twenty-square-foot (1.86 square meter) heating surface (not applicable to electric boiler).

(iii) Five-cubic-foot gross (0.14 cubic meter) volume exclusive of casing and installation.

(iv) One hundred psi (689 kPa) maximum allowable working pressure.

(F) "Nuclear Boiler"—A nuclear power plant system which produces and controls an output of thermal energy from nuclear fuel and those associated systems essential to the functions of the power system. The components of the system include such items as pressure vessels, piping systems, pumps, valves, and storage tanks.

(G) "Heating Boiler"—Any steam heating boiler, hot water heating boiler, hot water supply boiler, or lined potable water heater, which is directly fired with oil, gas, solar energy, electricity, coal, or other solid or liquid fuels.

(i) "Steam Heating Boiler"—A boiler for operation at pressures not exceeding 15 psi.

(ii) "Hot Water Heating Boiler"—A boiler for operation at a pressure not exceeding 160 psi and/or temperatures not exceeding 250 degrees F. at or near the boiler outlet.

(iii) "Hot Water Supply Boiler"—A boiler for operation at pressures not exceeding 160 psi and/or temperatures not exceeding 250 degrees F. at or near the boiler outlet when any of the following limitations is exceeded:

(a) Heat input of 200,000 Btu/hour.

(b) Water temperatures of 210 degrees F.

(c) Nominal water-containing capacity of 120 gallons (454.21).

(iv) "Potable Water Heater"—A boiler for operation at pressures not exceeding 160 psi and water temperatures not in excess of 210 degrees F. when any of the following limitations is exceeded:

(a) Heat input of 200,000 Btu/hour.

(b) Nominal water-containing capacity of 120 gallons.

(8) "Chief Inspector"—The Inspector appointed in accordance with Section 8 of this Act.

(9) "Code"—ASME Code.

(10) "Commissioner"—The Commissioner of the Department of Labor and Standards of the State of Texas.

(11) "Condemned Boiler"—A boiler inspected and declared unfit for further service by the Chief Inspector, the Deputy Inspector, or the Commissioner.

(12) "Certificate Inspection"—An inspection, the report of which is used by the Chief Inspector to decide whether or not a Certificate of Operation may be issued.

(13) "Certificate of Operation"—A Certificate issued by the Commissioner permitting the operation of a boiler.

(14) "Deputy Inspector"—An Inspector appointed by the Commissioner.

(15) "Existing Installation"—Any boiler constructed, installed, placed in operation, or contracted for before June 3, 1937.

(16) "External Inspection"—An inspection of the exterior of the boiler and its appurtenances made when a boiler is in operation, where possible.

(17) "Electric Boiler"—See Boiler, "Electric".

(18) "Heating Boiler"—See Boiler, "Heating".

(19) "High-Temperature Water Boiler"—See Boiler, "High Temperature Water".

(20) "Hot Water Heating Boiler"—See Boiler, "Hot Water Heating".

(21) "Hot Water Supply Boiler"—See Boiler, "Hot Water Supply".

(22) "Inspection Agency"—An authorized inspection agency providing inspection services in accordance with Section 10 of this Act.

(23) "Inspector"—Chief Inspector, Deputy Inspector, or Authorized Inspector.

(24) "Internal Inspection"—A complete and thorough inspection of the interior of the boiler where construction will permit.

(25) "Lined Potable Water Heater"—See Boiler, "Potable Water Heater".

(26) "Major Repair"—A repair upon which the strength of the boiler will depend.

(27) "Miniature Boiler"—See Boiler, "Miniature".

(28) "National Board"—The National Board of Boiler and Pressure Vessel Inspectors.

(29) "National Board Inspection Code"—The Manual for Boiler and Pressure Vessel Inspectors published by the National Board.

(30) "New Installations"—A boiler constructed, installed, or placed in operation after June 3, 1937.

(31) "Nuclear Boiler"—See Boiler, "Nuclear".

(32) "Non-Standard Boiler"—A boiler that does not qualify as a standard boiler.

(33) "Owner or User"—Any person, firm, or corporation owning or operating boilers within the State.

(34) "Portable Boiler"—A boiler which is primarily intended for use in a temporary location.

(35) "Power Boiler"—See Boiler, "Power".

(36) "Preliminary Order"—A written order issued by the Chief Inspector or any Deputy Inspector to require repairs or alterations to render a boiler safe for use or to require that operation of the boiler be discontinued.

(37) "Reinstalled Boiler"—A boiler removed from its original setting and reinstalled at the same location or at a new location without change of ownership.

(38) "Repair"—The work necessary to return a boiler to a safe and satisfactory operating condition without changing the original design.

(39) "Rules and Regulations"—The Code of Rules and Regulations promulgated and enforced by the Commissioner in accordance with Section 6 of this Act.

(40) "Safety Appliance"—Safety devices such as safety valves or safety relief valves (within the jurisdictional limits of the boiler as prescribed by the ASME Code and the Rules and Regulations) provided for the purpose of diminishing the danger of accidents.

(41) "Secondhand Boiler"—A boiler of which both the location and ownership have changed.

(42) "Special Inspection"—An inspection by the Chief Inspector or Deputy Inspector other than those in Sections 4, 4a, and 5 in this Act.

(43) "Standard Boiler"—A boiler which bears a Texas stamp, the ASME stamp, or the stamp of any jurisdiction which has adopted a standard of construction equivalent to that required by the Commissioner.

(44) "Steam-Heating Boiler"—See Boiler, "Steam Heating".

(45) "Unfired Steam Boiler"—See Boiler, "Unfired".

Registration of Boilers; Certificate of Operation; Injunction Against Operation of Unsafe Boiler

Sec. 2. Unless otherwise specifically exempted in this Act, all boilers operated within the State shall be registered with the Department of Labor and Standards. In addition, such boilers shall not be operated unless they have satisfactorily passed a Certificate of Operation and have qualified for a Certificate of Operation. The Certificate of Operation shall remain in full force and effect until expiration unless cancelled for cause by the Commissioner and shall be placed under glass in a conspicuous place on or near the boiler for which it is issued. No prosecution shall be maintained where the issuance of or the renewal of such Certificate of Operation shall have been requested and shall remain unacted upon. However, if the operation of such boiler without a Certificate of Operation shall constitute a serious menace to the life and safety of any person or persons in or about the premises, the Commissioner, as hereinafter provided for, shall apply to the District Court in a suit brought by either the Attorney General of the State, or any District or County Attorney, in the county in which such boiler is located, for an injunction restraining the operation of said boiler until the unsafe condition restraining its use shall be corrected and a Certificate of Operation issued. In all such cases it shall not be necessary for the attorney bringing the suit to verify the pleadings or for the State to execute a bond as a condition precedent to the issuing of any injunction or restraining order hereunder. The affidavit of the Commissioner that no application for or no Certificate of Operation exists for such boiler, and the affidavit of the Chief Inspector or any Deputy Inspector that its operation constitutes a menace to the life and safety of any person or persons in or about the premises, shall be sufficient proof to warrant the immediate granting of a temporary restraining order.

Board of Boiler Rules

Sec. 2a. There is established within the Department of Labor and Standards a Board of Boiler Rules, consisting of nine members appointed by the Commissioner. Except for the initial appointees, members hold office for terms of six years expiring on January 31 of odd-numbered years. In making the initial appointments, the Commissioner shall designate three for terms expiring in 1979, three for terms expiring in 1981, and three for terms expiring in 1983.

The Commissioner may remove any member of the Board for inefficiency or neglect of duty in

office. Upon the resignation, death, suspension, or incapacity of any member, the Commissioner shall fill the vacancy for the remainder of the vacated term with an individual representative of the same interests with which the predecessor was identified.

The nine members shall have experience with boilers, and at least four, when available, shall be registered professional engineers licensed in the State of Texas. Three members shall be representatives of owners or users of boilers, one shall be representative of boiler manufacturers or installers, three shall be representatives of companies insuring boilers in this State, one shall be a mechanical engineer on the faculty of a recognized engineering college within the State, and one shall be a representative of a labor union.

The Chief Inspector shall serve as chairman, and the Commissioner shall be an ex officio member. At the call of the chairman, the Board shall meet at least twice each year at a place designated by the Board. No decision of the Board shall be effective unless supported by the vote of at least five members.

The Board shall act in an advisory capacity to the Commissioner in formulating definitions, rules and regulations for the safe construction, installation, inspection, operating limits, alteration, and repair of boilers and their appurtenances.

The Board members shall serve without salary, but are entitled to reimbursement for actual expenses incurred in the performance of their duties as board members.

Exemptions from Act

Sec. 3. The following are exempt from the provisions of this Act:

- (1) Boilers owned or operated by the Federal Government;
- (2) Pressure Vessels and unfired steam boilers, except:
 - a. Steam drums of unfired steam boilers.
 - b. Waste heat boilers.

Exemptions from Sections 4, 5, and 11 of Act

Sec. 3a. The following shall be exempt from the requirements of Sections 4, 5, and 11 of this Act:

1. Heating Boilers used for heating in buildings occupied solely for residence purposes with accommodations not to exceed four (4) families.

Inspections; Ordering Repairs to Unsafe Boiler; Hearing; Temporary Certificate of Operation

Sec. 4. The Commissioner shall cause boilers subject to the provisions of this Act to be inspected internally and externally (except as provided for in Sections 4 and 4a) as follows:

(1) Power boilers shall receive a certificate inspection annually and shall also be externally inspected annually while under pressure if possible.

(2) Steam heating boilers and hot water heating boilers shall receive a certificate inspection biennially.

(3) Hot water supply boilers and lined potable water heaters shall receive a certificate inspection triennially.

(4) Portable steam boilers shall be inspected externally each time it is moved to a new location, provided that an internal inspection shall be made of each such boiler at least once each twelve (12) months.

(5) Nuclear boilers shall be inspected and reported in such form and with such appropriate information as the Commissioner shall designate.

If such boilers referred to herein are found, upon inspection, to be in a safe condition for operation, a Certificate of Operation shall be issued by the Commissioner for its operation for a period not longer than the interval required for certificate inspections. If any inspection authorized hereunder shall show the inspected boiler to be in an unsafe or dangerous condition, the Chief Inspector or any Deputy Inspector shall issue a preliminary order requiring such repairs and alterations to be made to such boiler as may be necessary to render it safe for use, and may also order the use of such boiler discontinued until such repairs and alterations are made or such dangerous and unsafe conditions are remedied. Unless such preliminary order be complied with by the owner or user, a hearing before the Commissioner shall be allowed, upon written request, at which the owner or user, making the request, shall have opportunity to appear and show cause why the preliminary order should not be complied with. If it shall thereafter appear to the Commissioner that such boiler is unsafe and that the requirements contained in said preliminary order should be complied with, or that other things should be done to make said boiler safe, the Commissioner may order or confirm the withholding of the Certificate of Operation for said boiler and may make such requirements as may be deemed proper for the repair or alteration of said boiler or the correction of such dangerous and unsafe conditions. The Chief Inspector may issue a temporary Certificate of Operation for a period not to exceed thirty (30) days, pending the completion of replacements or repairs. Nothing in this Section shall be construed to limit the authority of the Commissioner as set forth in Section 6 of this Act. Any boiler which cannot be rendered safe for use shall be condemned and the use of such boiler shall be prohibited.

Interval Between Internal Inspections

Sec. 4a. Upon the approval of the Commissioner and the inspection agency having jurisdiction, the interval between internal inspections may be extended to a period not to exceed twenty-four (24) months for power boilers and forty-eight (48) months for waste heat boilers and for other unfired steam boilers using heat resulting from the operation of a process system, the interval may be extended to the next scheduled down time, but not to exceed 60 months provided: (1) continuous water treatment under competent and experienced supervision has been in effect since the last internal inspection for the purpose of controlling and limiting corrosion and deposits; (2) accurate and complete records are available showing that since the last internal inspection samples of boiler water have been taken or monitored at regular intervals not greater than twenty-four (24) hours of operation and that the water condition in the boiler is satisfactorily controlled; (3) accurate and complete records are available showing the dates such boiler has been out of service and the reasons therefor since the last internal inspection, and such records shall include the nature of all repairs to the boiler, the reasons why such repairs were made; and (4) the last internal and current external inspection of the boiler indicates the inspection period may be safely extended. When such an extended period between internal inspections has been approved by the Commissioner and the inspection agency having jurisdiction, as outlined in this Section, a new Certificate of Operation shall be issued for that extended period of operation.

Intervals of Inspection for Nuclear Boilers

Sec. 4b. Intervals of inspection for Nuclear Boilers shall be as established by the Commissioner and the owner.

Insurance Company Reports; Inspection by Authorized Inspector; Certificate of Operation; Notice of Cancellation or Expiration of Insurance Policy

Sec. 5. Every insurance company authorized to insure and inspect boilers in this State shall, within thirty (30) days after a certificate inspection file a report with the Commissioner stating the condition of the boiler. The report shall also include the location of the boiler, date inspected, and the name of the inspector.

Any boiler inspected by an authorized inspector shall be exempt from other inspections and inspection fees under the provisions of this Act; provided nothing in this Section shall prevent the Commissioner from authorizing the inspection of any boiler at any reasonable time when, in the opinion of the Commissioner, such boiler may be in an unsafe condition. The Commissioner shall contact the insurance company carrying insurance on the boiler and request the authorized inspector to participate with

the Chief Inspector or Deputy Inspector to jointly inspect the boiler, within twenty (20) days. No additional charge shall be made for this inspection.

The Commissioner is authorized to issue a Certificate of Operation to the owner or user of all boilers subject to inspection under this Act. The owner or user shall remit to the Texas Department of Labor and Standards the sum of Five Dollars (\$5) for each Certificate of Operation to be issued. This fee is included in the internal and external inspection fee authorized in Section 11 of this Act.

Every insurance company shall notify the Commissioner in writing of the cancellation or expiration of every policy of insurance issued by it with reference to boilers in this State, within twenty (20) days after the expiration or cancellation of said policy, giving the cause or reason for such cancellation or expiration. Such notice of cancellation or expiration shall show the date of the policy and the date when the cancellation or expiration has or will become effective.

Rules and Regulations; Special Inspection Service; Exchange of Information

Sec. 6. The Commissioner is hereby authorized and empowered to promulgate and enforce a code of rules and regulations in keeping with standard usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers. The Commissioner may adopt rules and regulations to provide inspection procedures for use of nondestructive examination equipment to comply with the inspection requirements specified in Section 4 of this Act. The Commissioner is empowered to provide special inspection service to owner-users and manufacturers including surveys required for certification to construct, assemble or repair boilers or pressure vessels. Provided that the Commissioner or any employee of the Department, shall not have authority to prescribe the make, brand or kind of boilers to buy or purchase.

The Commissioner may exchange information and experience data with other authorities having boiler inspection divisions or departments in assembling data for the promulgation of rules and regulations authorized under the provisions of this Act.

Prior to the adoption, amendment, or repeal of any rules, the Commissioner shall give at least 30 days' notice of the 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 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.

Each notice of a proposed rule becomes effective as legal notice when published in the Texas Register. The notice shall be mailed to all persons who have made timely written requests of the Commissioner for advance notice of the rulemaking proceedings. However, failure to mail the notice does not invalidate any actions taken or rules adopted.

Prior to the adoption of any rule, the Commissioner 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 or by any association having at least 25 members. The Commissioner shall consider fully all written and oral submissions concerning the proposed rule. On adoption of a rule, the Commissioner 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.

If the Commissioner 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 his reasons for that finding, he may proceed without prior notice or hearing or on any abbreviated notice and hearing that he 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 the provisions of this section is not precluded. An emergency rule adopted under these provisions and the Commissioner's written reasons for the adoption, shall be filed in the office of the secretary of state for publication in the Texas Register.

No rule adopted is valid unless adopted in substantial compliance with this section and the provisions of the Administrative Procedure and Texas Register Act.¹

¹ Article 6252-13a.

Grievance Procedure

Sec. 7. When any person is aggrieved by any fundamental rule, regulation or order promulgated by the Commissioner, that person shall notify the Commissioner of such grievance by formal notice in writing, whereupon the Commissioner shall give consideration of such grievance and may modify, change, alter or amend same by motion upon failure or refusal of the Commissioner, within ten (10) days,

to change, alter or modify such fundamental rule, regulation or order, the Commissioner, shall, upon written application for hearing, cause the same to be held within five (5) days thereafter, at which the person complaining shall have opportunity to show cause, if any, why such fundamental rule, regulation or order complained of should be set aside, altered, amended or repealed.

Appointment and Qualifications of Chief and Deputy Inspectors

Sec. 8. The Commissioner shall appoint a Chief Inspector of boilers who shall be the Administrator of the boiler program. The Chief Inspector shall be a resident of Texas and a citizen of the U.S.A. The appointee shall have at least five (5) years experience in the construction, installation, inspection, operation, maintenance, or repair of boilers and shall have passed a written examination demonstrating the necessary ability to judge the safety of boilers for use. The Chief Inspector shall not have a commercial interest in the manufacture, ownership, insurance, or agency of boilers or their appurtenances. The Commissioner shall appoint Deputy Inspectors, as needed, with qualifications similar to those of the Chief Inspector, and such clerical assistants as may be necessary to carry out the provisions of this Act.

Salaries and Expenses

Sec. 9. The salaries and expenses of persons employed or appointed pursuant to the terms of this Act shall be established by the Legislature.

Persons Authorized to Inspect; Commission of Authorized Inspectors; Revocation of Certificate of Operation

Sec. 10. The Commissioner may cause the inspection provided for in this Act to be made either by the Chief Inspector, a Deputy Inspector, or an Authorized Inspector. However, Authorized Inspectors shall be continuously employed by an insurance company and shall first obtain from the Commissioner a Texas commission as an inspector of boilers. The Commissioner is vested with full power and authority to determine the qualifications (by written examination) of any applicant seeking a commission as inspector. The Commissioner may accept, after proper investigation, the commission issued to an inspector by any other jurisdictional authority having a written examination equal to that of the State of Texas. The Commissioner may rescind for good cause, any Texas commission issued to any person. The Commissioner may revoke any Certificate of Operation issued for any boiler within this State upon good cause being shown therefor and after notice and opportunity for hearing thereon.

Fees for Inspection

Sec. 11. The Commissioner shall fix and collect fees as provided by this Section, for the inspection of boilers. The fees shall be as follows:

- (1) For all boilers other than heating boilers:
 - (A) Boilers with a heating surface of fifty (50) square feet (4.65 square meter) or less:\$15

(B) Boilers with a heating surface greater than fifty (50) square feet (4.65 square meter) but not greater than one hundred (100) square feet (9.29 square meter): . . \$25

(C) Boiler with a heating surface greater than one hundred (100) square feet (9.29 square meter) but not greater than five hundred (500) square feet (46.45 square meter): \$30

(D) Boilers with a heating surface greater than five hundred (500) square feet (46.45 square meter) but not greater than one thousand five hundred (1,500) square feet (139.35 square meter): \$35

(E) Boilers with a heating surface greater than one thousand five hundred (1,500) square feet (139.35 square meter): \$40

(2) For heating boilers:

(A) Boilers without a manhole: \$15

(B) Boilers with a manhole: \$25

Such fees must be paid by the owner or user before the issuance of a Certificate of Operation for the boiler inspected. Fees collected by the Commissioner under the provisions of this Section of the Act shall be paid into the State Treasury to the credit of the General Revenue Fund.

Special Inspection Fee

Sec. 11a. The fee for a special inspection is One Hundred Twenty-five Dollars (\$125) for four (4) hours or less and One Hundred Seventy-five Dollars (\$175) for a full day, plus travel and per diem based upon the current Appropriations Act, such travel and per diem collected under the provisions of this Section of the Act shall be reappropriated to the credit of the Boiler Inspection Division.

Penalty for Violations by Persons in Charge of Boilers

Sec. 12. Any person, firm, corporation, or agent thereof, owning or having the custody, management, use or operation of any boiler in this State, who shall violate any provision of this Act, or who violates any rule, regulation or order promulgated by authority hereof by the Commissioner or any regularly employed inspector authorized to enforce any provision or any rule, regulation or order authorized herein, or any person, firm, corporation, or agent thereof coming within any provision of this Act, or any rule, regulation or order authorized herein, who shall fail or refuse to comply therewith, shall be deemed guilty of a misdemeanor and upon conviction therefor shall be subject to a fine of not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars

(\$200), or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment.

Penalty for Violations by Operators of Factory, Mill, Workshop, Mine, Store, Business House, Public or Private Work

Sec. 13. Any owner, manager, superintendent or other person in charge or in control of any factory, mill, workshop, mine, store, business house, public or private work, or the lessee or operator of same, or the owner or lessee of any place where a boiler subject to inspection hereunder is located, who shall refuse to allow any official or employee of the Department of Labor and Standards to enter the same and remain thereon or therein for such time as reasonably necessary, or who shall hinder any such official or employee in any way, or who shall in any way prevent or deter said official or employee from carrying out the provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not to exceed One Hundred Dollars (\$100) or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment.

Notice of Rule, Regulation or Order Violation Prerequisite to Criminal Action

Sec. 14. Whenever there shall have been adopted, amended or repealed as provided for under this Act, any rule, regulation or order, no criminal action shall be maintained against any person involving the violation of any provision of such rule, regulation or order, until the Commissioner shall have given notice of such rule, regulation or order.

Admission in Evidence of Affidavit Setting Forth Terms of Order

Sec. 15. An affidavit under the Seal of the Commissioner executed by the said Commissioner or the Chief Inspector or any Deputy Inspector, setting forth the terms of any order of the Commissioner and that it has been adopted, promulgated and published, and was in effect at any date during any period specified in such affidavit, shall be admitted in evidence in any action, civil or criminal, involving such order and the publication thereof without further proof of such promulgation, adoption or publication and without further proof of its contents.

Partial Invalidity

Sec. 16. Should any section, subsection, sentence, clause, phrase, provision or exemption of this Act be declared unconstitutional or invalid for any reason such invalidity shall not affect the remaining portions or provisions hereof.

[Amended by Acts 1977, 65th Leg., p. 162, ch. 82, § 1, eff. April 25, 1977.]

CHAPTER SIXTEEN. MISCELLANEOUS PROVISIONS

Article 5221g. Employment Counseling Program for Displaced Homemakers [NEW].

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, or exchanging mobile homes or offering such for sale, exchange, or lease-purchase to consumers. No person shall be considered a dealer unless engaged in the sale, exchange, or lease-purchase 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) "Broker" means a person engaged by others to negotiate bargains or contracts for the sale, exchange, or lease-purchase of mobile homes to consumers. A broker may or may not be an agent of any party involved in the transaction. No person shall be considered a broker unless engaged in the sale, exchange, or lease-purchase of three or more mobile homes to consumers in any consecutive 12-month period.

(g) "Consumer" means any person who seeks or acquires by purchase, exchange, or lease-purchase a mobile home from a manufacturer, dealer, or broker.

(h) "Salesperson" means any person who for any form of compensation sells or lease-purchases or offers to sell or lease-purchase mobile homes to consumers as an employee or agent of a dealer.

(i) "Seal" means a device or insignia issued by the department to be affixed to used mobile homes to indicate compliance with the standards, rules, and regulations established by the department. The seal shall remain the property of the department.

(j) "Label" means a device or insignia issued by the department to indicate compliance with the standards, rules, and regulations established by the Department of Housing and Urban Development, and is permanently affixed to each transportable section of each mobile home manufactured after June 15, 1976, for sale to a consumer.

(k) "Installation," when used in reference to a mobile home and when required by this Act, means supporting, blocking, leveling, securing, anchoring, and proper connection of multiple or expandable units and minor adjustments.

(l) "Installer" means any person, including a mobile home dealer or manufacturer, who performs installation functions on mobile homes.

(m) "Alteration" means the replacement, addition, and modification, or removal of any equipment or installation after sale by a manufacturer to a dealer but prior to sale by a dealer to a purchaser which may affect the construction, fire safety, occupancy, plumbing, heat-producing or electrical system. It includes any modification made in the mobile home which may affect the compliance of the home with the standards, but it does not include the repair or replacement of a component or appliance requiring plug-in to an electrical receptacle where the replaced item is of the same configuration and rating as the one being replaced. It also does not include the addition of an appliance requiring "plug-in" to an electrical receptacle, which appliance was not provided with the mobile home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which it is connected.

(n) "Lease-purchase" means to enter into a lease contract with a provision conferring on the lessee an option to purchase the mobile home.

(o) "Commissioner" means the Commissioner of the Texas Department of Labor and Standards.

(p) "Code" means the Texas Mobile Home Standards Code.

Mobile Homes Standards

Sec. 4. (a) The department may adopt 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 department may adopt such minimum standards as it deems necessary for the installation of mobile homes except those in the inventories of manufacturers and dealers within this state so that such mobile homes shall withstand winds of mini-

mum 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. Compliance with such installation standards shall be the responsibility of the dealer or manufacturer (when the manufacturer sells mobile homes directly to consumers).

(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 lease-purchased 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 installed in accordance with such minimum standards.

(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 installation 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, or for the approval of more stringent standards by any county or municipality, the department shall publish in the Texas Register 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 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 in the Texas Register 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 installation 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 supplied the department with proof of acceptance by a Design Approval Primary Inspection Agency authorized by the Department of Housing and Urban Development, has purchased the required labels, and has all mobile homes manufactured in this state inspected by an accepted In-Plant Inspection Agency authorized by the Department of Housing and Urban Development.

(b) No alteration shall be made on any mobile home to which a label has been affixed prior to installation without the prior written approval of the department or which is not in compliance with the rules and regulations of the department.

(c) 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.

(d) It is unlawful for any manufacturer to sell any mobile home to a dealer in this state if said dealer has not complied with the bonding or security requirements of 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 and bears a label.

Seal of Approval

Sec. 8. Any dealer who has acquired a used mobile home without a seal or label 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

Sec. 9.² (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 publish in the Texas Register 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 in the Texas Register 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 code.

¹ 42 U.S.C.A. § 5414.

² 42 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 \$15 for the inspection of the installation of mobile homes which shall be paid by the dealer or manufacturer who sold the mobile home to the consumer. Said fee shall be paid to the state. This fee shall be paid within 30 days and shall accompany notification to the department of the exact location of the mobile home. The department shall make fee distributions to local governmental subdivisions performing inspections pursuant to contracts or other official designations.

(b) Looking for guidance to the rules and regulations promulgated under Title VI of the Housing and Community Development Act of 1974¹ and to that Act itself, the commissioner shall set fees for the following functions:

(1) There shall be a schedule of fees for the review of mobile home blueprints and supporting data when the department acts as a Design Approval Primary Inspection Agency. This fee shall be paid by the manufacturer seeking approval.

(2) There shall be an inspection fee on all mobile homes manufactured or assembled within the State of Texas. This fee shall be paid by the manufacturer of the home. The manufacturer shall also be charged for the actual cost of travel for representatives of the department to and from the manufacturing facility.

(3) The fees in Subsections (1) and (2) shall not be applicable when an accepted inspection agency authorized by the Department of Housing and Urban Development, other than the department, acts as the Design Approval Primary Inspection Agency or the In-Plant Inspection Agency.

(4) There shall be a fee for inspection of new or used mobile homes at dealer locations to check compliance with the code and to determine if the mobile home has been damaged in transit. This fee shall be paid by the dealer in possession of the mobile homes at the time the inspection was made. For any given mobile home at a dealer location, this fee may not be assessed more than one time.

(5) There shall be a fee charged on an hourly basis for inspection of alterations made upon the structure, plumbing, heating, or electrical systems of mobile homes. This fee shall be paid by the dealer making the alteration. The dealer shall also be charged for the actual cost of travel for representatives of the department to and from the dealership making the alteration.

(6) There shall be a fee for the issuance of seals for used mobile homes which shall be paid by the dealer.

(c) Fees assessed under this Act shall be paid to the State Treasury and placed in the General Revenue Fund except as otherwise provided in Subsection (a) of this section. In addition, the reimbursements for travel expenses provided in Parts (2) and (4), Subsection (b) of this section, are hereby reappropriated to the department for use in its mobile home program.

(d) The existing fees charged by the department shall remain in effect upon the effective date of this Act and until the new schedule of fees set forth in Subsection (b) of this section has been promulgated and adopted.

Sec. 12. [Deleted.]

Security Required

Sec. 13. (a) As of the effective date of this Act, manufacturers, dealers, and salespersons are required to file either a performance bond, a cash deposit, or other security in such form as the commissioner may prescribe along with such information as the commissioner may deem necessary to insure compliance with the intent of this Act.

(b) If a performance bond is filed, it shall be continuous and remain in effect until cancelled by the surety company with notice as provided by this Act. A cash deposit or other security need not be posted annually so long as the applicable amount specified in Subsection (i) of this section remains posted. If a claim is made against a cash deposit causing the deposit to be lessened, the depositor has 20 calendar days in which to deposit additional money or other security so that compliance may be had with the requirements of Subsection (i) of this section. If the deficit is not eliminated within 20 days, any subsequent contract between a consumer and the inadequately covered dealer, manufacturer, or salesperson is voidable at the option of the consumer.

(c) At the time a consumer enters into a contract, if a manufacturer, dealer, or salesperson has neither posted a cash deposit or other security, nor filed a performance bond, the contract between a consumer and that manufacturer, dealer, or salesperson is voidable at the option of the consumer.

(d) If a cash deposit or other security is posted, the interest from said deposit shall go to the depositor.

(e) The bond shall be a surety bond issued by a company authorized to do business in this state and shall be in conformity with the Insurance Code. The cash deposit or other security shall be in such a form as the commissioner may deem appropriate to insure compliance with the intent of this Act.

(f) The bond, cash deposit, or other security 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, restitution, or expenses including reasonable attorney's fees resulting from a cause of action connected with the sale or lease-purchase 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, restitution, or expenses. The bond or other security shall be open to successive claims up to the amount of face value or required security. The surety shall not be liable for successive claims in excess of the bond amount, regardless of the number of years the bond remains in force.

(g) A consumer shall inform the manufacturer, dealer or salesperson, and the department of any claim against the bond or security no later than two years after the purchase of the mobile home. Whenever the department receives notice of a claim against a bond, the department shall promptly notify the bonding company involved. At the time of sale or delivery of a mobile home to a consumer, the consumer must be given conspicuous written notification of this two-year limit and the notice requirements.

(h) Any manufacturer or dealer who maintains a place of business at one or more locations shall file with the department a separate bond or security for each location.

(i) A manufacturer shall be bonded, supply a cash deposit or other security in the amount of \$100,000. A dealer shall be bonded, supply a cash deposit, or other security in the amount of \$25,000. A salesperson shall be bonded, supply a cash deposit or other security in the amount of \$2,000.

(j) The bonding company must provide written notification to the department at least 60 days prior to the cancellation of any bond required by this Act. Any cash deposit or other security on file with the department shall remain on file with the department two years after the manufacturer or dealer ceases the business of manufacturing or selling mobile homes or such time as the department may determine that no claims exist against the cash deposit or security.

(k) Brokers shall be considered to be dealers. Brokers shall not be considered to be dealers if they possess a valid real estate broker or salesperson license as required by The Real Estate License Act (Article 6573(a), Vernon's Texas Civil Statutes). In order for a licensed real estate broker or salesperson to qualify for this exemption he or she may only sell used mobile homes installed on and a part of the sale of real property.

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; 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 installation functions performed on the mobile home are performed in compliance with this Act, and other applicable state requirements, provided that such installation oper-

ations shall not be performed by any person other than a dealer, manufacturer, or their duly authorized agents;

(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 of the dealer and manufacturer where notices of defects may be given.

Monitoring Contracts

Sec. 15. The department may enter into contracts with the Department of Housing and Urban Development or its designees for the purpose of nationwide monitoring of Department of Housing and Urban Development programs.

Judicial Review

Sec. 16. (a) Any party to a 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 supersedeas 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.

(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, or salesperson 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, or salesperson 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, manufacturer, or salesperson from continuing the violation or threat of violation or for the assessment and recovery of the civil penalty or for both.

(d) Failure by a manufacturer or dealer to comply with the warranty provisions in Section 14 of this Act or the code provisions in Section 4 of this Act is considered a deceptive trade practice in addition to those practices delineated in Chapter 17, Subchapter E, Business & Commerce Code.¹ As such, the venue provisions and all remedies available in said subchapter apply to and are cumulative with the remedies 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 inval-

id, 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; Acts 1977, 65th Leg., p. 288, ch. 139, § 1, eff. May 13, 1977.]

Art. 5221g. Employment Counseling Program for Displaced Homemakers

Purpose

Sec. 1. Because of the increasing number of persons in this state who, having fulfilled a role as homemaker, find themselves "displaced" through divorce, death of spouse, or other loss of family income, and because of homemakers' unique and invaluable contribution to the welfare of society as unpaid workers, it is the intention of the legislature in enacting this legislation to provide the counseling necessary to enable displaced homemakers to assume or resume a valuable role commensurate with their talents and abilities in the paid work force.

Definitions

Sec. 2. In this Act:

(1) "Commission" means the Texas Employment Commission.

(2) "Displaced homemaker" means an individual:

(A) who:

(i) has worked without pay as a homemaker for his or her family;

(ii) is not gainfully employed; and

(iii) has had, or would have, difficulty in finding employment; and

(B) who also:

(i) has depended for financial support on the income of a family member and has lost that income; or

(ii) has depended on government assistance as the parent of dependent children, but is no longer eligible for the assistance.

Establishment

Sec. 3. The Texas Employment Commission shall establish a special assistance job-counseling program for displaced homemakers. The commission shall design the program specifically for a person reentering the paid work force after a number of years as a homemaker. The counseling shall consider and build upon the skills and experiences of a homemaker and shall prepare the person through employment counseling to reenter the paid work force as well as develop and hone job skills. The program shall assist displaced homemakers in obtaining training

and education as well as place displaced homemakers in suitable employment. The commission may not charge a fee for participation by a displaced homemaker in the program.

Utilization of Existing Personnel, Equipment, Etc.

Sec. 4. In establishing the job-counseling program, the commission shall utilize existing commission personnel, services, facilities, and equipment.

Cooperation in Securing Employment

Sec. 5. Agencies, departments, and commissions of the state and political subdivisions of the state shall cooperate with the commission in securing suitable employment for displaced homemakers counseled by the commission.

[Acts 1977, 65th Leg., p. 328, ch. 159, §§ 1 to 5, eff. May 17, 1977.]

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

Repeal

This Title 86, with certain enumerated exceptions, was repealed by art. 1, § 2(a)(1) of Acts 1977, 65th Leg., p. 2689, ch. 871, enacting the Natural Resources Code, effective September 1, 1977.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

CHAPTER ONE. ADMINISTRATION

Arts. 5249 to 5267. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

CHAPTER TWO. SURVEYORS AND SURVEYS

1B. LICENSED STATE LAND SURVEYORS

Article

5282b. Licensed State Land Surveyors' Act of 1977 [NEW].

Arts. 5268 to 5282. Repealed by Acts 1977, 65th Leg., p. 1451, ch. 589, § 20, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977

Without reference to repeal of these articles by Acts 1977, 65th Leg., p. 1451, ch. 589, § 20, art. 5268a was added by Acts 1977, 65th Leg., p. 1835, ch. 735, § 2.026, to read:

"The Board of Examiners of State Land Surveyors is subject to the Texas Sunset Act; and unless continued in existence as provided by that Act the board is abolished effective September 1, 1979."

See, now, the Licensed State Land Surveyors' Act, art. 5282b.

1A. REGISTERED PUBLIC SURVEYORS

Art. 5282a. Registered Public Surveyors Act of 1955

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

Definitions

Sec. 2.

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

(b) Public Surveying and Public Surveyor. Public surveying means the practice for compensation of

determining the boundaries or the topography of real property or of delineating routes, spaces, or sites in real property for public or private use by using relevant elements of law, research, measurement, analysis, computation, mapping, and descriptive writing. Public surveying includes the practice for compensation of land, boundary, or property surveying or other similar professional practices.

A public Surveyor is any person engaged in public surveying as defined in this Act, and who is employed as a surveyor or who holds himself out to the public as such.

[See Compact Edition, Volume 4 for text of 2(c) to (e)]

Exemptions

Sec. 3. The provisions of this Act shall not apply to any of the following:

(a) County Surveyors acting in an official capacity as authorized by law in counties under 25,000 population and in counties over 25,000 population who hold that position on the effective date of this Act;

(b) Licensed State Land Surveyor when acting in his official capacity as authorized by law;

(c) Registered Professional Engineer when practicing his profession as authorized by law;

(d) Officer of a state, county, except as provided by Subsection (a) of this section when applicable, city or other political subdivision whose official duties include land surveying when acting in his official capacity;

(e) Deputy, assistant or employee of any person exempted from the provisions of this Act by subsections (a), (b) and (c) of this Section when acting under the direction and supervision of such exempted person; or

(f) Assistant or employee of any Public Surveyor registered under the provisions of this Act when he works for, receives a substantial part of his income from, and acts under the direction and supervision of such Registered Public Surveyor.

[See Compact Edition, Volume 4 for text of 4]

Application of Sunset Act

Sec. 4a. The State Board of Registration for Public Surveyors is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1979.

¹ Article 5429k.

Powers and Duties of the Board

Sec. 5. The Board shall have the authority and power to make and enforce all rules and regulations necessary to the performance of its duties, to establish standards of conduct and ethics for public surveyors in keeping with the purposes and intent of this Act or to insure compliance with and enforcement of this Act. The violation by any surveyor of any provision of this Act or any rule or regulation of the Board shall be sufficient reason or ground to suspend or revoke the certificate of registration of such surveyor. In addition to any other action, proceeding, or remedy authorized by law, the Board shall have the right to institute an action in its own name against any person to enjoin any violation of this Act or any 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 exist, or that substantial or irreparable damage would result from the continued violation thereof. An injunction suit may be brought in the district court of Travis County. Either party may appeal the decision of the district court. The Board shall not be required to give an 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.

At its first meeting it shall elect one (1) of its members as Chairman of the Board, and he shall serve as such Chairman for such length of time, not exceeding his term as member of the Board, as the Board may prescribe. The Board may, for good cause and after hearing, remove a Chairman, but such removal as Chairman shall not affect the right of such member to serve on the Board for the remainder of his appointed term. Upon the death, resignation or removal of a Chairman, the Board shall elect a successor from among its members. Four (4) members of the Board shall constitute a quorum for the transaction of any of its business, and a majority of those present at any meeting may decide any question before the Board, provided, however, that the Chairman of the Board may not be removed as Chairman except by a vote of two-thirds ($\frac{2}{3}$) of the members of the Board at a meeting called for that purpose. The Board may adopt such reasonable rules and regulations for the orderly conduct of its affairs as it may deem necessary, and may from time to time amend such rules and regulations.

The first Board appointed under the provisions of this Act shall hold its first meeting within thirty (30) days after the members have been qualified and shall hold at least two (2) regular meetings each year at such time and place as the Chairman may designate. It may hold special meetings at such times and places as a majority thereof may deem necessary after giving reasonable notice thereof to all the members. The Board is authorized to employ an Executive Secretary who shall devote full time to his work and shall have such duties and responsibilities as the Board may prescribe. The Board is authorized to employ such other persons as it may deem necessary to administer the provisions of this Act. The salaries of the Secretary and all other employees of the Board shall be fixed by the Board, and shall be paid out of the Registered Public Surveyors' Fund as provided for in this Act. All salaries paid by the Board shall be reasonably comparable in amount to salaries paid by other departments of the state government to employees engaged in similar capacities. All persons employed by the Board shall hold their positions at the pleasure of the Board. Each member of the Board shall receive the sum of Twenty-Five Dollars (\$25.00) per day for each day he is actually engaged in the discharge of his duties as such member, including time spent in necessary travel, together with all legitimate expenses incurred in the performance of such duties. All payments to Board members or employees, and all expenses of the administration of this Act, shall be paid out of the Registered Public Surveyors' Fund provided for herein, and no part of the expense of administering this Act shall ever be a charge against the General Funds of the State of Texas. The Board shall arrange for such suitable office space and equipment as it may deem necessary and the rental for such office space and the cost of such equipment shall be considered administration expense. The Board shall, as of December 31, of each year after the passage of this Act, make a written report to the Governor accounting for all receipts and disbursements under this Act. A roster showing the names and places of business of all Registered Public Surveyors shall be prepared by the Secretary of the Board during the month of July of each odd-numbered year. Copies of this roster shall be mailed to each person so registered, placed on file with the Secretary of State, and furnished to the public upon request.

Qualifications for Registration

Sec. 6. From and after January first following the effective date of this Act, no person except those exempted from the operation of this Act as provided for in Section 3 hereof, shall engage or continue in the practice of Public Surveying as defined herein unless such person shall be registered as provided herein. The following classes of persons shall be qualified for registration:

(a) All persons residing in Texas and engaged in the practice of Public Surveying on the effective date of this Act, and who have been so engaged for five (5) years immediately preceding the effective date hereof, upon satisfactory showing to the Board of the moral and educational fitness of such person to continue in such practice. Applications to register under this subsection (a) of Section 6 must be filed within one (1) year after this Act becomes effective.

(b) All persons who can show to the satisfaction of the Board that they have had at least eight (8) years experience in land surveying in Texas of which at least two (2) years were in responsible charge of surveying work. Within the meaning of this subsection, two (2) years of basic engineering course in an accredited school or college shall be considered the equivalent of two (2) years of land surveying. Applicants to register under subsection (b) of Section 6 must be filed within five (5) years after this Act becomes effective.

(c) All persons who apply to take, and successfully pass, an examination given by the Board to determine the fitness and qualification of the person examined shall be qualified for registration. Such examination shall be written and oral, and shall be designed to reflect knowledge and ability on the part of the applicant, showing to the Board that he is qualified to be placed in charge of surveying work. The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified to be admitted to examination as a public surveyor:

(1) The applicant is more than twenty-one (21) years of age.

(2) The applicant is of good character and reputation.

(3) The applicant has satisfied one of the following educational and experience requirements:

(A) has successfully completed a full four (4) year course of study in land surveying or civil engineering at an accredited college or university leading to a bachelor's or higher degree in either field and has a specific experience record of two (2) or more years as a subordinate to a registered public surveyor or a person qualified in land surveying in the active practice of land surveying, of a character indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying work performed; or

(B) has successfully completed a full four (4) year course of study other than

land surveying or civil engineering at an accredited college or university leading to a bachelor's or higher degree and has a specific experience of four (4) or more years as a subordinate to a registered public surveyor, or a person qualified in land surveying in the active practice of land surveying, of a character indicating the applicant was in responsible charge of the accuracy and correctness of the surveying work performed. The course of study shall have included not less than thirty-two (32) semester hours of study or its academic equivalent, in any combination of courses in civil engineering, land surveying, mathematics, photogrammetry, forestry, or land law and the physical sciences; or

(C) has successfully completed a course of study in land surveying or Board approved survey-related courses at an accredited college or university of thirty-two (32) semester hours of study, or its academic equivalent, and has a specific experience record of six (6) or more years as a subordinate to a registered public surveyor or a person qualified in land surveying in the active practice of land surveying, five (5) years of such experience shall be of a character indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying work performed; or

(D) is a graduate of an accredited high school and has a specific experience record of six (6) or more years as a subordinate to a registered public surveyor or a person qualified in land surveying in the active practice of land surveying, of a character indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying work performed. Applicants under this subsection without the college or university credits listed in Paragraph (A), (B), or (C) must show they have become self-educated in the surveying field.

An applicant desiring to register as a Public Surveyor shall file with the Board an application therefor in writing, accompanying the application with a registration fee, the amount having been determined by the Board but in no event to exceed Fifty Dollars (\$50). If the Board finds that the applicant is qualified to register as herein provided for, it shall issue to him a Certificate of Registration and assign to

him a registration number which shall not thereafter be assigned to, nor used by any other surveyor. Such number shall be placed on the Certificate of Registration and recorded in the permanent records of the Board, and shall constitute the registration number of such surveyor and shall be used by him on all his official documents. The Certificate of Registration shall also show the full name of registrant and shall be signed by the Chairman and Secretary of the Board. If the Board finds that an applicant is not qualified to be registered at the time of making his application, but is qualified to take an examination, it shall set and notify the applicant of the time and name a place for the applicant to take such examination. The applicant may take the examination upon payment of an examination fee set by the Board not to exceed \$100. Upon passing the examination to the satisfaction of the Board, the applicant shall be entitled to a Certificate of Registration as hereinabove provided.

Applications for registration shall be on forms prescribed and furnished by the Board, shall contain statements made under oath, showing the applicant's education and a detailed summary of his technical work, and shall contain not less than five (5) references, of whom three (3) or more shall be surveyors having personal knowledge of his surveying experience. The scope of the examinations and the methods of procedure shall be prescribed by the Board with special reference to the applicant's ability which shall insure safety to the public welfare and property rights. A candidate failing an examination may apply for re-examination at the expiration of six (6) months by filing an updated application and paying an additional examination fee.

All Certificates of Registration shall expire on the last day of the month of December following their issuance or renewal or on a date set by the Board as part of a staggered renewal system and shall become invalid on that date unless renewed. It shall be the duty of the Secretary of the Board to notify every person registered under this Act of the date of the expiration of his certificate and the amount of the fee that shall be required for its renewal for one (1) year; such notice shall be mailed at least one (1) month in advance of the date of the expiration of said certificate. Renewal may be effected at any time during the month of expiration by the payment of a fee to be set by the Board but not to exceed \$50. The failure on the part of any registrant to renew his certificate annually in the month of expiration as required above shall not deprive such person of the right of renewal, but the fee to be paid for the renewal of a certificate after the month of expiration shall be increased ten per cent (10%) for each month or fraction of the month that renewal payment is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed twice

the normal renewal fee; and provided further that if such failure to renew shall continue for more than one (1) year after the date of expiration of the registration certificate, the applicant must reapply for registration and must qualify under the foregoing provisions of this section before being registered. All renewal certificates shall carry the same registration number as the original certificate. All original and renewal Certificates of Registration shall be evidence that the person whose name and registration number appears thereon is qualified to practice as a Registered Public Surveyor so long as such certificate is valid and in force. Each registrant hereunder shall, upon receiving his Certificate of Registration, obtain a seal of the design authorized by the Board, bearing the registrant's name and number and the legend "Registered Public Surveyor"; plats, field notes and reports prepared by a registrant or under his direction shall be stamped with the said seal when filed with public authorities or delivered to a private client. It shall be unlawful for anyone to stamp or seal any document with said seal after the certificate of the registrant named thereon has expired or has been revoked, unless said certificate shall have been renewed or reissued.

[See Compact Edition, Volume 4 for text of 6A]

Reciprocal Certificate

Sec. 6B. (a) The Board may issue a Certificate of Registration on a reciprocal basis to a person who:

- (1) has passed a written examination with the same or higher standards as those of this state given by a governmental authority outside of this state and holds a current registration with that governmental authority;
- (2) meets the relevant requirements of this Act and the rules and regulations of the Board;
- (3) passes a written examination not less than four hours in duration which includes questions on laws, the issuance of grants and land titles, procedures, and practices relevant to the practice of public surveying in this state; and
- (4) pays a fee set by the Board not to exceed Fifty Dollars (\$50).

(b) The Board may issue a Certificate of Registration on a reciprocal basis to a person who holds a current registration as a public surveyor with a governmental authority outside of this state, but who has not passed a written examination given by that governmental authority, and who:

- (1) meets the requirements in Subdivisions (2), (3), and (4) of Subsection (a) of this section; and
- (2) passes other examinations which the Board may require.

Reprimands, Revocations, Suspensions, and Reissuance
of Certificates

Sec. 7. The Board shall have the power to reprimand or to revoke or suspend the Certificate of Registration of any registrant who is charged with and found guilty of:

(a) The practice of any fraud or deceit in obtaining a Certificate of Registration;

(b) Any gross negligence, incompetency, or misconduct in the practice of surveying as a registered public surveyor; or

(c) The violation of a provision of this Act or a rule or regulation promulgated by the Board.

In determining the truth of any such charges, the Board shall proceed upon sworn information furnished it by any reliable resident of this State; such information shall be in writing and shall be duly verified by the person familiar with the facts therein charged, and three (3) copies of the same shall be filed with the Secretary of the Board. Upon receipt of such information the Board, if it deems the information sufficient to support further action on its part, shall make an order setting the charges therein contained for hearings at a specified time and place, and the Secretary of the Board shall cause a copy of the Board's order and of the information contained in the written charges to be served upon the accused at least thirty (30) days before the date appointed in the order for the hearing. The accused may appear in person or by counsel, or both at the time and place named in the order and make his defense to the same. If the accused fails or refuses to appear, the Board may proceed to hear and determine the charges in his absence. If the accused pleads guilty, or upon a hearing of the charges, the Board by a majority of its members shall find them to be true, it may enter an order revoking the Certificate of Registration of such registered public surveyor. The Board shall have the power, through its Chairman or Secretary, to administer oaths and compel the attendance of witnesses before it as in civil cases in the District Court by subpoena issued over the signature of the Secretary and seal of the Board. If the accused desires the evidence to be preserved and shall so inform the Board before the hearing is begun and shall deposit with the Board such a sum of money as the Board may deem reasonably necessary for the employment of a competent reporter, then the Board shall employ such reporter and, when so employed, he shall be the official reporter of the Board for the purpose of reporting the evidence and proceedings of such Board. In proceedings under this section, a majority of the Board shall constitute a quorum.

The Board may employ persons for the purpose of gathering evidence necessary to enable the Board to arrive at a just decision.

When the Board has completed such hearing, it shall make a record of its findings and shall order and cause a certified copy thereof to be forwarded to the accused.

Any person who may feel himself aggrieved by reason of the revocation of his Certificate of Registration by the Board, as hereinabove authorized, shall have the right to file suit within thirty (30) days after receiving notice of the Board's order revoking his Certificate of Registration, in the District Court of Travis County, Texas, to annul or vacate the order of the Board revoking the Certificate of Registration; said suit to be filed against the Board as defendant, and service of process may be had upon its Chairman or Secretary. The only issues to be tried in such case shall be whether such person has been guilty as originally found by the Board, which issues shall be tried de novo, as that term is commonly used in connection with an appeal from the justice of the peace court to the county court, and the substantial evidence rule shall not apply.

The Board, for equitable reasons it may deem sufficient, may reissue a Certificate of Registration to any person whose certificate has been revoked, provided four (4) or more members of the Board vote in favor of such reissuance. A new Certificate of Registration, to replace any certificate revoked, lost, destroyed, or mutilated, may be issued, subject to the rules of the Board, and a charge of Ten Dollars (\$10) shall be made for such issuances.

Violations and Penalties

Sec. 8. After the effective date of this Act, as defined in Section 6 hereof, any person who shall practice, or offer to practice, the profession of Public Surveying in this State without being registered or exempted in accordance with the provisions of this Act, or any person presenting or attempting to use as his own the Certificate of Registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the Board or to any member thereof in obtaining or assisting to obtain for another a Certificate of Registration, or any person who shall violate any of the provisions of this Act or a rule or regulation promulgated by the Board, shall be fined not less than Two Hundred Dollars (\$200) nor more than One Thousand Dollars (\$1,000), or be confined in jail for a period not exceeding three (3) months, or both. Each day of such violation shall be a separate offense. Before instigating a criminal action against a person, the Board may invite the person to show cause why the action should not be instigated.

The Board is charged with the duty of aiding in the enforcement of the provisions of this Act, and any member of the Board may present to a prosecut-

ing officer complaints relating to violations of any of the provisions of this Act; and the Board, through its members, officers, counsel and agents may assist in the trial of any cases involving alleged violations of said statutes, subject to the control of the prosecuting officers.

The Attorney General or his assistants shall act as legal adviser of the Board and shall render such legal assistance as may be necessary in enforcing and making effective the provisions of this Act; provided that this shall not relieve the local prosecuting officers of any of their duties under the law as such.

[See Compact Edition, Volume 4 for text of 9 to 11]

[Amended by Acts 1977, 65th Leg., p. 72, ch. 36, §§ 1 to 3, March 30, 1977; Acts 1977, 65th Leg., p. 1835, ch. 735, § 2.025, eff. Aug. 29, 1977.]

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

1B. Licensed State Land Surveyors

Art. 5282b. Licensed State Land Surveyors' Act of 1977

Short Title

Sec. 1. This Act may be cited as the Licensed State Land Surveyors' Act of 1977.

Definitions

Sec. 2. In this Act:

(1) "Licensed state land surveyor" means a person engaged in the practice of surveying land in which the state or the Public Free School Fund has an interest, or other original surveys, for the purpose of filing field notes in the General Land Office. When acting in this official capacity, such surveyor is an agent of the State of Texas.

(2) "State land surveying" means the practice for compensation of determining the boundaries or the topography of real property or of delineating routes, spaces, or sites in real property by using relevant elements of law, research, measurement, analysis, computation, mapping, and descriptive writing, and comprises the determination of the location or relocation of original land grant boundaries and corners in which the state or the Public Free School Fund has an interest and the field notes and/or maps of which are to be filed in the General Land Office of the State of Texas.

(3) "Person" means a natural person except where otherwise specifically indicated.

(4) "Board" means the Board of Examiners of Licensed State Land Surveyors as provided for in this Act.

(5) "Commissioner" means the Commissioner of the General Land Office of the State of Texas.

(6) "Secretary-treasurer" means the secretary-treasurer elected by the board.

(7) "Assistant secretary-treasurer" means the assistant secretary-treasurer designated by the commissioner.

Board of Examiners of Licensed State Land Surveyors

Sec. 3. There is hereby created a Board of Examiners of Licensed State Land Surveyors, which shall consist of the commissioner, who shall be chairman, and two reputable licensed state land surveyors of not less than 10 years' practical and active experience in the field as land surveyors, who shall be citizens of the United States and residents of this state, who shall be appointed by the governor upon the recommendation of the commissioner and with the advice and consent of the senate. At the time of such appointment, the governor shall designate one member to serve a term of three years and the other member a term of six years from the date of appointment, and thereafter one member shall be appointed each three years for a term of six years. The members of the board shall serve from the date of their appointment or until their successors are duly appointed and have qualified. Before entering upon the duties of his office each member of the board shall take and subscribe the constitutional oath of office, and the same shall be filed with the secretary of state. Upon the death, resignation, or removal of a member of the board, the governor shall appoint a successor for the remainder of the term of such member who shall qualify in the same manner as other members of the board. Any member may be removed by the governor for official misconduct, gross inefficiency, or moral unfitness.

Organization of Board; Quorum; Meetings

Sec. 4. Within 30 days after the effective date of this Act, the board shall meet in the General Land Office and elect one of their number secretary-treasurer, who shall keep an accurate record of the proceedings of the board and a correct list of all persons licensed by the board, and in addition shall keep an account of all receipts and expenditures of the board. Such records shall be deposited in the General Land Office and become records of that office. The commissioner shall designate some employee of his office as assistant secretary-treasurer, who shall attend to all clerical work of the board. The presence of two members of the board shall constitute a quorum for the transaction of any business, and the concurrence of two members shall be necessary for the adoption or rejection of any ques-

tion upon which they shall be called to pass. The commissioner, as chairman of the board, may call a meeting thereof at any time the accumulated business for the attention of the board may warrant.

Duties of Board

Sec. 5. (a) The board shall have the authority and power to make and enforce all rules necessary to the performance of its duties and may from time to time amend such rules.

(b) A roster showing the names and addresses of all licensed state land surveyors shall be prepared by the assistant secretary-treasurer during the month of October of each year. Copies of this roster shall be mailed to each person so licensed, placed on file with the secretary of state, and furnished to the public upon request.

(c) The board shall give both an oral and a written examination upon the theory of surveying, the law of land boundaries, the history and functions of the General Land Office, and such other matters pertaining to surveying as the board may deem important, such examination to be given in the General Land Office in Austin. All applications for license shall be on forms prescribed and furnished by the board and shall contain statements made under oath showing applicant's education and experience. The application will be accompanied by an examination fee of \$35.

Qualifications for License

Sec. 6. All persons who apply to take, and successfully pass, an examination given by the board shall receive a license. An applicant must:

- (1) be found by the board to be of good character and reputation; and
- (2) be a registered public surveyor duly registered under the Registered Public Surveyors Act of 1955, as amended (Article 5282a, Vernon's Texas Civil Statutes).

Examination

Sec. 7. (a) If the board finds that an applicant has successfully passed the examination, it shall issue a license to him; provided, however, such license shall not issue until applicant has taken the oath of office and filed the bond as hereinafter required. Such examination, including questions and answers, shall be deposited in the General Land Office and safely kept for at least two years.

(b) If a license be refused an applicant, he may take any subsequent examination under the same conditions as in the first instance, and by the payment of the same fee, provided that such examination shall not be given before the expiration of at least five months after the preceding examination.

Seal of Licensee

Sec. 8. Each licensed state land surveyor shall procure a seal of office. Around the margin shall be the words "Licensed State Land Surveyor," which shall be his official title, and between the points of the star in the seal shall be the word "Texas." He shall attest with the seal all his official acts authorized under the provisions of the law. No act, paper, or map of a licensed state land surveyor shall be filed in the county records or the General Land Office unless certified to under the seal of such surveyor.

License: Term of; Grounds for Revocation; Resignation

Sec. 9. (a) A license issued to an applicant under these provisions shall be valid for life provided the licensee pays a yearly renewal fee, not to exceed \$20, as determined by the board, during the month of September and receives a card validating the license for an additional year. It shall be the duty of the assistant secretary-treasurer of the board to notify every person licensed under this Act of the requirement for a renewal card and the amount of the fee required during the month of August of each year. For this and other uses, each licensee is required to notify the commissioner of any change of address as it occurs. The failure on the part of any licensee to renew his license annually in the month of September as required above shall not deprive such person of the right of renewal, but the fee to be paid for the renewal shall be increased 10 percent 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; and provided further that if such failure to renew shall continue for more than one year after the date of expiration of the renewal card, the licensee must reapply for a license as any new applicant. Current license holders must pay the annual renewal fee beginning the September following the effective date of this Act. The license is valid as above unless the licensee resigns as herein provided or the license is revoked by the board because the holder:

- (1) has been found by a court of competent jurisdiction guilty of a felony or adjudged to have committed a theft, or fraud, or to be insane;
 - (2) shall be found by the board to be incompetent or to have been directly or indirectly interested in the purchase or in the acquisition of title to any public land; or
 - (3) shall be found by the board guilty of any act or default discreditable to the surveying profession.
- (b) A licensed state land surveyor may resign as such surveyor at any time he may so desire by filing his resignation in writing with the commissioner of

the General Land Office. On receipt of such resignation the commissioner shall cause to be made an entry on his records showing such act on the part of the licensee, and thereupon the duties of such licensee as a licensed state land surveyor shall cease, but such resignation shall not operate to relieve the principal and sureties of said surveyor's official bond of any liability that may have accrued prior to the effectiveness of such resignation. The attorney general shall represent the board in all actions and proceedings to enforce the provisions of this Act.

Impersonation of a Licensed State Land Surveyor

Sec. 10. Any person who impersonates a licensed state land surveyor by the signing of his name as such or by using the seal of such when not entitled to shall be guilty of a misdemeanor and when found guilty shall be subject to a fine of up to \$500 or up to six months confinement in the county jail for each day of such impersonation, or both fine and confinement.

Revocation of License

Sec. 11. Before any license issued under these provisions shall be revoked, the holder thereof shall have been notified by the board by registered mail addressed to him at his last known address, at least 30 days before the day fixed for a hearing, stating the charges and the time and place for such hearing. The evidence adduced at such hearing shall be reduced to writing. If the board finds the charges sustained by the evidence, the license of such surveyor shall be revoked. The surveyor whose license has been revoked may within 60 days from the date the charges are sustained by the board, appeal from such revocation to a district court in Travis County. Such case may be carried to the appellate courts, as in other cases, by either the board or such surveyor. On such appeal the court shall admit in evidence the written record of the board together with such other evidence as may be offered on either side in accordance with the rules of evidence in such courts.

Oath and Bond

Sec. 12. (a) Before a surveyor's license issues, and before one who has successfully passed the examination as provided in this Act shall be authorized to perform the duties of a licensed state land surveyor, he shall take the official oath and shall make a good and sufficient bond in the sum of \$1,000, payable to the governor, conditioned that he will faithfully, impartially, and honestly perform all the duties of a licensed state land surveyor to the best of his skill and ability in all matters wherein he may be employed. No surveyor's license shall be issued hereunder to any person residing outside the State of Texas.

(b) Such bond may be executed by two or more solvent personal sureties or by some solvent surety

company authorized to transact business in this state. Should the bond be signed by personal sureties each shall take and subscribe an oath that he is worth over and above all debts and exemptions at least double the penalty of the bond. Such personal bond shall also be approved by the commissioners court of the county where the applicant resides. After the oath and bond have been executed as herein provided they shall be recorded in the office of the county clerk of the county in which the applicant resides and after being so recorded shall be filed in the General Land Office, accompanied with a \$3 filing fee, and thereupon a license shall be issued to applicant, and he shall be authorized to enter upon the discharge of the duties of a licensed state land surveyor. If for any reason the liability on the bond herein provided for shall be terminated, said licensee shall not be authorized to perform the duties of a licensed state land surveyor until a new bond is made as in the first instance. No surety on such bond, however, shall be relieved of liability thereon without first giving the commissioner of the General Land Office 30 days' notice in writing. The termination of said bond as herein provided, or the revocation of such surveyor's license, shall not relieve the sureties thereon from any liability that may have theretofore accrued thereon.

Authority of Licensee and Method of Obtaining Right to Survey on Private Land

Sec. 13. (a) Land surveyors licensed under this Act are hereby authorized to perform surveys under the provisions of Article 5299, Revised Civil Statutes of Texas, 1925, and to perform the duties that may be performed by the county surveyors and shall be subject to the direction of the commissioner of the General Land Office in matters of land surveying in such cases as may come under the supervision of such authorities. The jurisdiction of such licensees shall be coextensive with the limits of the state.

(b) They may hold the office of county surveyor, and if so elected shall qualify as provided by law for county surveyors, but such election for any particular county shall not limit the jurisdiction of said surveyor to such county nor shall the election of a county surveyor for any particular county prevent any licensed state land surveyor from performing the duties of a surveyor in such county.

(c) All official field notes made by a surveyor licensed under this law shall be signed by such surveyor, followed by the designation: "Licensed State Land Surveyor."

(d) When a person licensed under this Act is denied permission to cross the land owned by a private party when surveying under the provisions of this Act, then in such case, the county attorney of the county in which the land is located shall promptly seek an order from a court of competent jurisdiction giving such licensee authority to cross such private lands.

Field Notes to be Recorded

Sec. 14. The field notes and plats of every survey of public land made by any surveyor licensed under this Act shall be recorded in the county surveyor's records of the county in which the land may be situated. The field notes and plats of public land made by any licensed state land surveyor affecting the lines, boundaries, and areas of such land shall be forwarded to the General Land Office after the same have been recorded under the provisions of this Act. All field notes made by licensed state land surveyors in any county in this state shall have the same force and effect and be admissible in evidence the same as field notes made by a county surveyor.

Undisclosed Land

Sec. 15. If a licensed state land surveyor discovers any undisclosed tract of public land, he shall not make known that fact to anyone except to such person as may have it enclosed, except that, he shall forward to the commissioner of the General Land Office a report of the existence of such tract and the acreage therein and its probable value.

Compensation

Sec. 16. A licensed state land surveyor shall receive as compensation for his services such sums as may be mutually agreed upon between the surveyor and the interested party, including other expenses incident to the survey, whether the same be a private person, a county, a court, or the state.

County Surveyor Authorized to Record Field Notes and Documents in County Surveyor's Records; Exceptions; Fees; Access to Records

Sec. 17. (a) In cases where a county has a county surveyor, such surveyor alone shall be authorized to file and record field notes and plats of all surveys made in his county, and other documents subject by law to being recorded in the county surveyor's records, and issue certificates of fact and certify the correctness of copies of any document or record or entry shown by the records of a county surveyor; provided, however, that when a county surveyor or his authorized deputy or deputies are absent from his office, the county clerk of the county shall have free access to the county surveyor's office and public records and shall, in such event, be authorized to record field notes, plats, and other documents subject to being recorded in the county surveyor's records and issue certificates of fact and certify the correctness of copies of any document or record or entry shown on the official records of the county surveyor; and provided further that in cases where a county has no county surveyor, the county clerk of the county shall be the legal custodian of the surveyor's records and is authorized to make all such certificates and certify such copies as a legally authorized county surveyor may make.

(b) The fees for recording documents in the surveyor's records and issuing certificates and making certified copies shall be such as are now or hereafter provided by law. The county surveyor shall be entitled to fees for all documents recorded by him or his deputies and for all certificates and certified copies issued by him or his deputies, and the county clerk shall be entitled to all fees for documents recorded by him and for all certificates and certified copies issued by him under the provisions of this law.

(c) All licensed state land surveyors shall, for the purpose of information and examination, have access to the records of county surveyors, and no examination fee shall be charged in cases where an investigation of the records is being made with a view to making surveys of public lands under the laws regulating the sale or lease of the same or of identifying and establishing the boundaries thereof. All examinations shall be made under such regulations as may be provided by the county surveyor or the commissioners court for the safekeeping and preservation of the records.

Disposition of Fees

Sec. 18. The sums received by the board or so much thereof as may be necessary may be used to defray the actual expense incurred by the members of said board in the execution of this law, and other expense necessary for the proper administration hereof, and the remainder shall be deposited annually in the state treasury to the credit of the general revenue fund. No appropriation shall ever be made to defray the expenses of said board or to carry into effect the provisions of this law.

Examination and Licenses

Sec. 19. (a) No person shall be authorized to perform the duties of a licensed state land surveyor without first taking and passing the examination herein provided for and obtaining a license as provided by this Act.

(b) No surveyor holding a license as a licensed state land surveyor issued under former law shall be required to take and pass the examination provided for by this Act, and the authority of such surveyor to act as a licensed state land surveyor shall not be questioned by reason of his failure to take and pass said examination.

Repeal of Conflicting Legislation with Proviso

Sec. 20. (a) Articles 5268 through 5282, Revised Civil Statutes of Texas, 1925, as amended, are repealed.

(b) This Act shall not be construed as repealing or amending any laws affecting or regulating registered public surveyors or registered professional engineers in performing their duties or profession, and as such shall not be subject to the provisions of this

Act, nor shall this Act be construed to affect or prevent the practice of any other legally recognized profession by the members of such profession licensed or registered by the state or under its authority.

[Acts 1977, 65th Leg., p. 1445, ch. 589, §§ 1 to 20, eff. Aug. 29, 1977.]

Arts. 5283 to 5298. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5298a. Abolition of Office of County Surveyor in Counties of 39,800 to 39,900

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5299 to 5305a. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

CHAPTER THREE. SURFACE AND TIMBER RIGHTS

Arts. 5306 to 5311a. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5311b. Validating Sales

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5312 to 5326h. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5326i. Reinstatement of Purchases in Hutchinson County

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5326j to 5330. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5330a. Regulating Sale and Patenting of Lands Formerly Part of Oklahoma; Special Land Board Abolished; Powers and Duties of General Land Office

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5330b. Sale of Public Lands Along Western Oklahoma and Eastern Texas Boundary Authorized

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5331 to 5337-1. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 5331 was amended by Acts 1975, 64th Leg., p. 745, ch. 291, § 1 and art. 5337 was amended by Acts 1975, 64th Leg., p. 577, ch. 233, § 1.

Art. 5337-2. Execution in Favor of Nueces County Water Control and Improvement District No. 4 for Water Supply

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

CHAPTER FOUR. OIL AND GAS

Arts. 5339 to 5341c. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5341d. Extension of Leases on University Land; War Agency Restriction

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5341e. Suspension of Running of Terms of Leases While Owner is Denied Access by United States

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5342 to 5366. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 5344d was amended by Acts 1975, 64th Leg., p. 590, ch. 241, § 1.

Art. 5366a. Extension of Oil and Gas Leases on Areas Covered by Coastal Waters or Within Gulf

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5367 to 5379. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 5372 was amended by Acts 1975, 64th Leg., p. 1938, ch. 635, § 1.

Arts. 5380 to 5382b. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 5380 was amended by Acts 1975, 64th Leg., p. 1939, ch. 635, § 2.

Art. 5382b-1. Validation of Leases Advertised for 30 Days Prior to Act of 1949

Saved from Repeal

This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5382c to 5382f. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 5382d was amended by Acts 1975, 64th Leg., p. 1824, ch. 560, § 1.

Acts 1977, 65th Leg., p. 1845, ch. 735, § 2.095, added § 1a to art. 5382d to read:

"The Boards for Lease of State-Owned Lands are subject to the Texas Sunset Act [art. 5429k]; and unless each board is continued in existence as provided by that Act the board is abolished effective September 1, 1985."

Former art. 5382f, relating to sale of gas for use outside state by certain persons, agencies, and entities, was derived from Acts 1975, 64th Leg., p. 82, ch. 38.

CHAPTER SIX. PATENTS

Arts. 5404 to 5414. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5414a. Validating Patents on Lands Lying Across or Partly Across Water Courses or Navigable Streams

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5414a-1. Validating Deeds of Acquittance on Lands Lying Across or Partly Across Water Courses or Navigable Streams

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5414c. Effect of Judgment in Action to Recover Abandoned Land Titled Before Adoption of Common Law

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

CHAPTER SEVEN. GENERAL PROVISIONS

Article

5415e-1.5. Coastal Coordination Act of 1977 [NEW].

5415e-3. Coastal Wetlands Acquisition Act [NEW].

5415e-4. Dredge Materials Act [NEW].

5415i. Deepwater Port Procedures Act [NEW].

5415j. Caverns Protection Act [NEW].

5421s. Geothermal Resources Act of 1975 [NEW].

Arts. 5415 to 5415c. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5415d. Study Committee to Study Development of State Beaches

Secs. 1 to 6. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977.

Saved from Repeal

Section 7 of this article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Secs. 8 to 10. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977.

Arts. 5415d-1 to 5415d-4. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Acts 1977, 65th Leg., p. 1263, ch. 487, § 1, amended § 7 of art. 5415d-3, without reference to repeal of said article by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1). As so amended (with deletions in brackets and additions underscored), § 7 reads:

Jurisdiction and Powers of Board

"Sec. 7. All lands used as parks in connection with public beaches but not located within the boundaries of any incorporated city and not within the area bordering on the Gulf of Mexico from the line of mean low tide to the line of vegetation as that term is defined in Chapter 19, Acts of the 56th Legislature, 2nd Called Session, 1959, as amended (Article 5415d, Revised Civil Statutes of Texas), and all public beaches owned in fee by the county, shall be under the jurisdiction of the board. The commissioners court of such county may designate any additional parks and facilities owned by the county, or to be managed by the county under the terms of a written contract, to be under the management and control of the board. In addition to the powers and authority herein granted, the board shall have and exercise the following powers and authority:

"(a) To manage, operate, maintain, equip, improve, and finance any and all existing public parks placed under its jurisdiction by the commissioners court;

"(b) To improve, manage, operate, maintain, equip, and finance additional parks acquired by gift or otherwise, but not by the exercise of the power of eminent domain;

"(c) To accept, receive, and expend gifts of money or other things of value from any person, group of persons, corporation, or association for the purpose of performing any function, power or authority herein invested in the board;

"(d) To publish brochures and otherwise advertise the county's recreational advantages for the purposes of attracting tourists, residents, and other users of the public facilities operated by the board;

"(e) To accept and receive from the county and to expend such funds as may be appropriated by the county from time to time for the purpose of improving, equipping, maintaining, operating, and promoting recreational facilities under the board's supervision and control;

"(f) To enter into contracts, leases, or other agreements connected with or incident to or in any manner affecting the financing, construction, equipping, maintaining, or operating all facilities located or to be located on or pertaining to any lands under its jurisdiction, or any facilities under its control, and to execute and perform its lawful powers and functions on lands leased from others;

"(g) To have general power to make and enter into all contracts, leases, and agreements with persons, associations, and corporations relating to the management, operation, and maintenance of any concession, facility, improvement, leasehold, lands, or other property of any nature whatsoever over which such board shall have jurisdiction and control; provided that the board shall not enter into any such lease or agreement for a longer term than 40 years;

"(h) To adopt, promulgate, and enforce all reasonable rules and regulations for the use of parks and facilities under the jurisdiction and control of the board by the public or by lessees, concessionaires, and other persons or corporations carrying on any business activity within the area of such public parks and facilities;

"(i) To employ secretaries, stenographers, bookkeepers, accountants, technical experts, and other such agents and employees, permanent or temporary, as it may require, and shall determine their qualifications, duties, and compensation. In addition, the board may also employ and compensate a manager for any parks or facilities and may give him full authority in the management and operation of the park or parks or facilities subject only to the direction and orders of the board. For such legal services as it may require the board may call upon the county attorney of such county and in lieu thereof or in addition thereto the board may employ and compensate its own counsel and legal staff. The board shall adopt a seal which shall be placed on all leases, deeds, and other instruments which are usually executed under seal, and on other such instruments as may be required by the board;

"(j) To sue and be sued in its own name;

"(k) To expend any moneys appropriated by the commissioners court for the purpose of cleaning and maintaining lands within its jurisdiction and public beaches including any moneys appropriated to the commissioners court by the State of Texas for such purpose;

"(l) To issue revenue bonds in the name of the board which shall be payable solely from the revenues of all or any designated part or parts of the properties or facilities under the jurisdiction and control of the board or from any other source of funds the board may wish to dedicate for that purpose, for the purpose of acquiring, developing, improving, and enlarging public recreational areas [parks] and facilities. Such bonds may be issued in one or more installments or series by resolutions adopted by the board without the necessity of an election, shall bear interest at a rate not to exceed 10 [six] percent per annum, shall mature serially or otherwise within 40 years from their date or dates, shall be sold by the board on the best terms obtainable, except that the annual interest rate and discount may not exceed 10 percent per annum, [but not for less than par and accrued interest], shall be executed by the chairman and secretary of the board, shall be signed by the chairman and the secretary of the board, or shall bear the facsimile signature of either or both, shall display the seal of the board either impressed, printed, or lithographed thereon, shall not be delivered until a transcript of the proceedings authorizing their issuance has been submitted to the Attorney General of Texas and by him approved as to legality and the bonds registered by the Comptroller of Public Accounts of the State of Texas, and shall be issued upon such terms and conditions in regard to the security, manner, place and time of payment, pledge of designated revenue, redemption before maturity, and the issuance of additional parity or junior lien bonds as the board shall specify in the resolution or resolutions authorizing such bonds. All bonds issued under the provisions of this Act are hereby declared to be legal and authorized investments for banks, saving banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds 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, or other political corporations or subdivisions of the State of Texas, and such bonds shall be lawful and sufficient security for said deposits to the extent of their face value when accompanied by all unmatured interest coupons appurtenant thereto;

"(m) The board shall not have the power or authority to issue any bonds payable in whole or in part from ad valorem taxes but shall be authorized to receive and expend the proceeds of any bonds payable from taxes which may be issued by the governing body of the county for park purposes after the same have been authorized at an election held in the manner required by law;

"(n) To issue refunding bonds for the purpose of refunding one or more series or installments of original or refunding revenue bonds of the board outstanding which refunding bonds shall be issued, approved as to legality by the Attorney General of Texas, and registered by the Comptroller of Public Accounts of Texas, in the manner and upon the terms and conditions prescribed for the issuance of original revenue bonds herein, such refunding bonds to bear interest at a rate or rates not exceeding that herein provided for the original bonds;

"(o) To enter into contracts with adjacent counties, with Beach Park Boards in adjacent counties, and with Beach Park Boards in any city of the same county as the board, to accomplish any of the purposes authorized by this Act;

"(p) To charge and collect a reasonable fee for access or entrance to, or parking upon, any lands under its jurisdiction other than public beaches owned by the county, or for the use of any facility located on land under the jurisdiction of the board."

Art. 5415e-1. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Art. 5415e-1.5. Coastal Coordination Act of 1977

Short Title

Sec. 1. This Act may be cited as the Coastal Coordination Act of 1977.

Policy

Sec. 2. (a) It is hereby declared to be the policy of this state to make more effective and efficient use of public funds and public facilities in coastal natural resource areas, and to better serve the people of Texas by:

(1) continually reviewing the principal coastal problems of state concern, the performance of state coastal programs, and the measures required to resolve identified coastal problems; and

(2) making the state's many existing coastal management processes more visible, accessible, and accountable to the people of Texas.

(b) It is hereby declared to be the policy of this state that the chief executive officer of the state should represent the State of Texas in discussions and negotiations with the federal government with regard to the effect of federal actions on the coastal programs and policies of the State of Texas.

Definitions

Sec. 3. For the purposes of this Act, unless the context clearly requires otherwise:

(a) "Coastal natural resource areas" means all of the following areas: areas in the Gulf of Mexico within the boundaries of this state; tidal inlets and tidal deltas; bays; lagoons which contain seawater and which have unimpaired connection with the Gulf of Mexico; oyster reefs; grassflats; channels which contain seawater; coastal lakes containing seawater; beaches adjacent to seawater; barrier islands; wind tidal flats; marsh which contains seawater; washover areas; sand dune complexes on the Gulf shoreline; river mouths and tidal streams up to the farthest point of intrusion by seawater; and spoil deposits in direct contact with seawater or located within, upon, or in direct contact with any of the coastal natural resource areas listed above. The term "coastal natural resource areas" shall not include any mainland area where seawater is present only during storms or hurricanes as defined by the Beaufort Wind Scale.

(b) "Natural Resources Council," hereinafter referred to as the NRC, means the Natural Resources Council created by separate enactment of the 65th Legislature,¹ and the successors of such council, if any. In the event that the legislature fails to create the Natural Resources Council, then "Natural Resources Council" means the Interagency Council on Natural Resources and the Environment, and the successors of such council, if any.

(c) "Seawater" means any water containing a concentration of one-twentieth of one percent or more by weight of total dissolved inorganic salts derived from the marine waters of the Gulf of Mexico.

(d) The definition presented in Subsection (a) of this section shall not be admissible in evidence in any court of law for any purpose other than the implementation and construction of this Act unless otherwise agreed by all parties to the case or controversy before the court.

NRC to Study Coastal Problems and Issues

Sec. 4. (a) The NRC is hereby authorized and directed to perform such studies of problems and issues affecting the coastal natural resource areas of the state as are in the public interest.

(b) The NRC is directed to prepare and submit to the governor and legislature before March 1 of each even-numbered year a comprehensive report with recommendations for action on problems and issues affecting the coastal natural resource areas of the state. The comprehensive report may include a minority report and recommendations.

(1) Such report shall include:

(i) a short description of the environmental, social, and economic changes in or affecting the coastal natural resource areas of the state during the preceding two years; this description should include changes in boundaries and state or federal coastal policies;

(ii) a statement of the principal problems of state concern in or affecting coastal natural resource areas:

(iii) a statement of the steps recommended by the NRC to resolve identified problems, including additions to or changes in state policies, programs, or statutes affecting coastal natural resource areas, transfers of programs among agencies, and the creation of new programs or elimination of old ones;

(iv) a review of the effectiveness of current programs for implementing state policy affecting coastal natural resource areas;

(v) a report on the success of actions taken by the NRC during the preceding two years, including public hearings, administration of federal grant funds, and specific studies;

(vi) recommended state coastal natural resource research and data acquisition priorities.

(2) The state agencies, university systems, other bodies, or elected officials represented on the NRC shall perform or cause to be performed all research and analyses requested by the NRC for the preparation of such report and transmit such research and analyses to the NRC by such time as is necessary to ensure the timely submission of the NRC's finished report to the governor and legislature.

(3) In the course of preparing such report, the NRC shall receive and consider the oral or written testimony of any person regarding the coastal policies, programs, and procedures of the state. The NRC may reasonably limit the

¹ See art. 4413(48).

length and format of such testimony and the time at which it will be received. Notice of the period during which such testimony will be received shall be published in the Texas Register not less than 30 days before the commencement of such period.

Governor to Report

Sec. 5. The governor shall report to the 66th Legislature on the full effect of this state's seeking the secretary of commerce's final certification of the Texas Coastal Management Program pursuant to Section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. Section 1456).

Repeal

Sec. 6. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict, provided that only those laws or parts of laws expressly in conflict with the provisions of this Act are so repealed.

[Acts 1977, 65th Leg., p. 1900, ch. 757, §§ 1 to 6, eff. Aug. 29, 1977.]

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 limited 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 sponsor requirements, the commission shall hold public hearings 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.]

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5415e-3. Coastal Wetlands Acquisition Act

Short Title

Sec. 1. This Act may be cited as Coastal Wetlands Acquisition Act.

Policy

Sec. 2. It is the declared policy of the state:

(a) to protect the property rights of those who sell interests in land to the state by fairly compensating such sellers therefor;

(b) to protect those coastal wetlands which are most essential to the public interest by acquiring fee and lesser interests in such coastal wetlands and managing them in a manner that will preserve and protect the productivity and integrity of such lands as coastal wetlands; and

(c) to assure that the state does not expend funds to acquire any coastal wetlands to which it already holds a valid title at the time of the expenditure.

Definitions

Sec. 3. For the purposes of this Act, unless the context clearly requires otherwise:

(a) "Acquiring agency" means the Texas Parks and Wildlife Department.

(b) "Certifying agency" means the General Land Office.

(c) "Coastal wetlands" means marshes and other areas of high biologic productivity where seawater is present during times other than and in addition to storms or hurricanes as defined by the Beaufort Wind Scale. "Coastal wetlands" shall not, however, include any areas seaward of the line of mean annual low spring tide, nor shall it include any mainland area where seawater is present only during storms or hurricanes as defined by the Beaufort Wind Scale. The presence at a given point of vegetation characteristic of marshes containing seawater shall be prima facie evidence that seawater is present at

such point during times other than and in addition to storms or hurricanes as defined by the Beaufort Wind Scale.

(d) "Seaward" means the direction away from the shore and toward the body of water bounded by such shore.

(e) "Seawater" means any water containing a concentration of one-twentieth of one percent or more by weight of total dissolved inorganic salts derived from the marine waters of the Gulf of Mexico.

Duties and Authority of Acquiring Agency

Sec. 4. (a) The acquiring agency has the following duties and authorities:

(1) to accept gifts, grants, or devises of interest in land;

(2) to acquire, by purchase or condemnation, fee and lesser interests in the surface estate in coastal wetlands certified by the certifying agency as most essential to protection of the public interest, provided that in each instance in which an interest in land is acquired by the acquiring agency pursuant to this section, a sufficient interest shall be acquired to preserve and protect the productivity and integrity of such lands as coastal wetlands; and

(3) to manage interests in lands acquired pursuant to this section in a manner that will preserve and protect the productivity and integrity of such lands as coastal wetlands.

(b) This Act shall not be construed to authorize the condemnation of any interest in the mineral estate in any coastal wetland.

(c) The acquiring agency shall promulgate such reasonable rules and regulations as may be necessary to preserve and protect the productivity and integrity of such lands as coastal wetlands acquired pursuant to this Act. Such rules and regulations shall include regulations governing activities conducted on such lands in conjunction with mineral exploration, development, and production.

(d) If the acquiring agency seeks to condemn an interest less than the fee interest in the surface estate in any coastal wetland pursuant to this Act, the owner of such coastal wetland may demand that the acquiring agency instead seek condemnation of the fee interest in the surface estate in such coastal wetland. Upon such demand, the acquiring agency shall either:

(1) seek to condemn the fee interest in the surface estate in such coastal wetland; or

(2) cease all condemnation proceedings pursuant to this Act against such coastal wetland.

Agricultural Exemption

Sec. 5. Coastal wetlands used only for farming or ranching activities, including maintenance and repair of buildings, earthworks, and other structures, shall not be subject to any power of condemnation exercised pursuant to this Act. However, such exemption from condemnation shall terminate upon the receipt by any state or federal agency of an application for a permit, license, or other authorization to conduct upon such wetlands activities other than (1) farming and ranching activities, including irrigation and water well drilling, and (2) activities necessary to exploration, development, or production of the underlying mineral estate.

Duties and Authority of Certifying Agency

Sec. 6. (a) The certifying agency has the following duties and authorities:

(1) to certify to the acquiring agency those coastal wetlands which are most essential to the public interest in accordance with the criteria in this Act, to assign priorities for acquisition of interests in such coastal wetlands, and to revoke certification made pursuant to this section when it is in the public interest to do so; and

(2) to publicize the importance to the public interest of coastal wetlands in general, and of designated coastal wetlands in particular.

(b) A certification, assignment of priority for acquisition, or revocation of certification made pursuant to this Act shall not constitute a "contested case" within the meaning of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(c)(1) The Commissioner of the General Land Office shall forward a copy of any such certification to the county judge of every county in which any part of the wetlands so certified may be located and shall request the recommendation of the Commissioners of said county thereon.

(2) Within 45 days of receipt of a certification from the Commissioner of the General Land Office, the commissioners court shall send to the Commissioner of the General Land Office their written recommendations concerning such certification.

(3) If the commissioners court of a county described in Subsection (c)(1) of this section agrees that the portion of the certified wetland within such county should be certified, or if the commissioners court does not submit recommendations to the Commissioner of the General Land Office within the time specified in Subsection (c)(2) of this section, then as to such portion of such wetlands, the certification shall continue in full force and effect.

(4) If the commissioners court of any county described in Subsection (c)(1) of this section recommends that the certified wetlands or any part of them within such county should not be certified,

then such certification shall be revoked as to that part of the wetlands.

(5) If the Commissioner of the General Land Office wishes to contest a revocation of certification pursuant to Subsection (c)(4) of this section, he shall forward the certification to the governor, together with the recommendations of the commissioners courts thereon and such further information as the Commissioner of the General Land Office shall deem advisable.

(6) If the governor determines that any certification revoked pursuant to Subsection (c)(4) of this section should be reinstated in whole or in part, he shall so notify the Commissioner of the General Land Office within 60 days of receipt of the certification pursuant to Subsection (c)(5) of this section. Upon receipt of such notice from the governor, the Commissioner of the General Land Office may recertify such part of the wetlands to the acquiring agency, and such certification shall be in full force and effect.

Most Essential Coastal Wetlands Certification

Sec. 7. (a) In selecting and certifying those coastal wetlands most essential to the public interest, and in assigning priorities of acquisition to such coastal wetlands, the certifying agency shall consider the following criteria:

(1) whether such lands are coastal wetlands within the definition, intent, and purpose of this Act;

(2) whether the state owns such coastal wetlands or claims title to them, which title can be validated by bringing an appropriate action therefor in a court of law;

(3) whether the biological, geological, or physical characteristics of such coastal wetlands, including the interrelationship of such coastal wetlands with other coastal wetlands, are essential to the public interest;

(4) the degree to which such coastal wetlands are in danger of being altered, damaged, or destroyed, and the imminence of such danger; and

(5) the cost of acquiring such coastal wetlands.

(b) The legislature hereby declares that certifications, assignments of priority for acquisition, and revocations of certifications made pursuant to Section 5 of this Act are made only for the purpose of administering the provisions of this Act. No such certifications, assignments of priority for acquisition, or revocations of certification shall be grounds for an inference, or admissible in a court of law to prove, that any coastal wetland is of greater or lesser value than any other coastal wetland for any purpose other than administering the provisions of this Act.

(c) A certification made pursuant to this Act shall expire one year from the date of certification.

(1) If on or before the expiration date of such certification the acquiring agency files suit in a court of law to condemn the certified coastal wetland, such certification shall extend until such suit is settled, dismissed, or otherwise terminated.

(2) If a contract of sale between the state and the owner of the certified coastal wetland is entered into on or before the expiration date of such certification, then such certification shall extend until title to such coastal wetland is conveyed to the state or such contract is rescinded, invalidated, or otherwise terminated.

Funding

Sec. 8. The acquiring agency may compensate the seller of lands acquired pursuant to this Act with funds obtained through:

- (a) gift, grant, or devise;
- (b) legislative appropriation; or
- (c) gift or grant from the United States.

[Acts 1977, 65th Leg., p. 1902, ch. 758, §§ 1 to 8, eff. Aug. 29, 1977.]

Art. 5415e-4. Dredge Materials Act

Short Title

Sec. 1. This Act may be cited as the Dredge Materials Act.

Policy

Sec. 2. (a) It is the declared policy of the state to seek, to the fullest extent permissible under all applicable federal law or laws, the delegation to the state of the authority which the corps of engineers exercises under Section 404, as defined in this Act, over the discharge of dredged or fill material in the navigable waters of the State of Texas.

(b) It is the declared policy of the state that the state should not duplicate the exercise of such authority by the corps of engineers, but should instead exercise such authority in lieu of the corps of engineers, so that no permit application is subject to duplicate levels of regulation.

Definitions

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

(a) "Agency" means the Texas Water Quality Board.

(b) "Agreement" means a written agreement or contract between the State of Texas and the United States, authorizing the State of Texas, through (name of an existing agency), to regulate the discharge of dredged or fill material in the navigable

waters of the state under the authority granted by Section 404, as defined in this Act.

(c) "Corps of engineers" means the United States Army Corps of Engineers.

(d) "Discharge of dredged or fill material" has the same meaning as it has in Section 404 as defined in this Act.

(e) "Navigable waters" has the same meaning within the boundaries of the State of Texas as it has in Section 404 as defined in this Act.

(f) "Section 404" means Section 404, Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. Section 1344), as it may be amended, and such regulations as may be from time to time promulgated thereunder.

Limitations

Sec. 4. (a) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to regulate the discharge of dredged or fill material in the navigable waters of the state in any manner different from or inconsistent with the requirements of Section 404.

(b) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to regulate the discharge of dredged or fill material in the navigable waters of the state:

- (1) by the corps of engineers;
- (2) by persons operating under contract with the corps of engineers;

(3) when the corps of engineers certifies that such discharge is incidental to a project undertaken by the corps of engineers or persons operating under contract with the corps of engineers, and that such incidental discharge was announced and reviewed at the same time and under the same conditions as such project; or

(4) by cities which own and operate deepwater port facilities, or by navigation districts or port authorities, or by persons operating under contract with such cities, navigation districts, or port authorities, when such discharges are part of or incidental to a navigation project to be paid for with public funds or when such navigation project is to be owned by such cities, navigation districts, or ports.

(c) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to regulate the discharge of dredged or fill material in the navigable waters of the state in any manner unless and until an agreement as described in this Act is validly entered into and in effect.

(d) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to exercise any authority under this Act except in accordance with an executive order of the governor.

(e) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to regulate the discharge of dredged or fill material in the navigable waters of the state in any manner different from, or inconsistent with, the agreement described in this Act.

(f) Nothing in this Act shall be construed as affecting any application for a permit from the corps of engineers to discharge dredged or fill material in the navigable waters of the state if such application is received by the corps of engineers or postmarked before the effective date of the agreement described in this Act.

Agreement

Sec. 5. (a) The governor is hereby authorized to enter into an agreement on behalf of the State of Texas, with the United States, acting through its authorized officials, under the terms of which the agency will regulate the discharge of dredged or fill material in the navigable waters of the state.

(b) The governor is expressly authorized to include whatever terms and conditions in such agreement he may deem to be in the best interest of the state, including provisions regarding the termination of such agreement.

(c) The authority of the governor under the Act to enter into such an agreement shall not be delegated.

(d) The legislature expressly finds that the provisions of this section are necessary to enable the governor to carry out his responsibilities under this Act.

Not Severable

Sec. 6. The provisions of this Act are expressly declared not to be severable, and if any provision of this Act shall be found to be invalid, the entire Act shall be null and void and of no further force or effect.

[Acts 1977, 65th Leg., p. 1906, ch. 759, §§ 1 to 6, eff. Aug. 29, 1977.]

Arts. 5415f to 5415h. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, § 12A was added to art. 5415g by Acts 1975, 64th Leg., p. 2218, ch. 705, § 12.

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) If the governor determines that the application transmitted from the secretary of transportation is substantially similar to a previous application already reviewed under the terms of this Act, the governor may notify the secretary of transportation whether the governor approves or disapproves the application, and there shall be no further proceedings under this Act on such application.

(c) 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.

(d) 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 deep-water port, as defined by Section 3(5) herein.

(e) 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.

(f) 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.

(g) If any state or local agency reports to the commissioner that the application is not in compli-

ance, such agency shall set forth in detail the manner 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.

(h) 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.

(i) 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. Amended by Acts 1977, 65th Leg., 1st C.S., p. 73, ch. 5, § 2, eff. July 26, 1977.]

Art. 5415j. Caverns Protection Act

Policy

Sec. 1. It is hereby declared to be the public policy and in the public interest of the State of Texas to protect and preserve all caves on or under any of the lands in the State of Texas, including tidelands, submerged lands, and the bed of the sea within the jurisdiction of the State of Texas.

Definitions

Sec. 2. In this Act:

(a) "Cave" means any naturally occurring subterranean cavity. The word "cave" includes or is synonymous with cavern, pit, pothole, well, sinkhole, and grotto.

(b) "Gate" means any structure, lock, door, or device located to limit or prohibit access or entry to any cave.

(c) "Person or persons" means any individual, partnership, firm, association, trust, or corporation.

(d) "Speleothem" means a natural mineral formation or deposit occurring in a cave. This includes or is synonymous with stalagmites, stalactites, helictites, anthodites, gypsum flowers, needles, angel's hair, soda straws, draperies, bacon, cave pearls, popcorn (coral), rimstone dams, columns, palettes, flowstone, or other similar crystalline mineral formations commonly composed of calcite, epsomite, gypsum, aragonite, celestite, and other similar minerals and formations.

(e) "Owner" means a person who owns title to land where a cave is located, including a person who owns title to a leasehold estate in such land.

Vandalism; Penalties

Sec. 3. (a) It shall be unlawful for any person, without express, prior, written permission of the owner, to wilfully or knowingly:

(1) break, break off, crack, carve upon, write, burn, or otherwise mark upon, remove, or in any manner destroy, disturb, deface, mar, or harm the surfaces of any cave or any natural material therein, including speleothems;

(2) disturb or alter in any manner the natural condition of any cave;

(3) break, force, tamper with, or otherwise disturb a lock, gate, door, or other obstruction designed to control or prevent access to any cave, even though entrance thereto may not be gained.

(b) Any person violating a provision of this section shall be guilty of a Class A misdemeanor, unless he has previously been convicted of violating this section, in which case he shall be guilty of a felony of the third degree.

Sale of Speleothems Unlawful; Penalties

Sec. 4. (a) It shall be unlawful to sell or offer for sale any speleothems in this state, or to export them for sale outside the state, without written permission from the owner of the cave from which the speleothems were removed.

(b) A person who shall violate any of the provisions of this section shall be guilty of a Class B misdemeanor.

Pollution Unlawful; Penalties

Sec. 5. (a) It shall be unlawful without prior permission of the owner to store, dump, dispose of, or otherwise place in caves any chemicals, dead animals, sewage, trash, garbage, or other refuse.

(b) A person who shall violate any provision of this section shall be guilty of a Class C misdemeanor. A person who shall violate any provision of this section shall, for the second offense, be guilty of a Class A misdemeanor. A person who shall violate any provision of this section shall for the third or any subsequent offense, be guilty of a felony of the third degree.

Permits for Excavations; How Obtained; Prohibitions; Penalties

Sec. 6. (a) No person shall excavate, remove, destroy, injure, alter in any significant manner, or deface any part of a cave owned by the State of Texas, unless he first obtains a permit described in Subsection (b) of this section.

(b) The General Land Office of the State of Texas may issue a permit under this subsection if the person seeking the permit furnishes the following information:

(1) a detailed statement giving the reasons and objectives for the excavation, removal, or alteration and the benefits expected to be obtained from the contemplated work;

(2) data and results of any completed excavation;

(3) the prior written permission from the state agency which manages the site of such proposed excavation;

(4) a sworn statement that he will carry the permit while exercising the privileges granted; and

(5) any other reasonable information which the General Land Office may prescribe.

(c) The General Land Office may for good cause revoke any permit issued under Subsection (b) of this section.

(d) A person who shall violate any provision of Subsection (a) of this section shall be guilty of a Class B misdemeanor. A person who violates any of the provisions of Subsection (b) of this section shall be guilty of a Class C misdemeanor and the permit herein authorized shall be revoked.

[Acts 1977, 65th Leg., p. 565, ch. 200, §§ 1 to 6, eff. May 20, 1977.]

Arts. 5417 to 5421a. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5421b. Withdrawal from Market of Lands Adjacent to Caddo Lake

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421b-1. Leasing for Minerals of Lands Under and Adjacent to Caddo Lake and Tributaries

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421c. Regulating Sale and Lease of School Lands, Public Lands and River Bed; Board of Mineral Development Created

Repeal

This article was repealed by art. 1, § 2(a)(1) of Acts 1977, 65th Leg., p. 2689, ch. 871, enacting

the Natural Resources Code except for sec. 8-A, subsecs. 6b and 6c [see Compact Edition, Volume 4], which were expressly saved from repeal by § 2(b) of the 1977 Act.

Arts. 5421c-1 to 5421c-3. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 5421c-1 was amended by Acts 1975, 64th Leg., p. 969, ch. 368, § 1.

Without reference to repeal of art. 5421c-3 by Acts 1977, 65th Leg., p. 2689, art. 1, § 2(a)(1), Acts 1977, 65th Leg., p. 1846, ch. 735, § 2.099, added subd. 3a thereto to read:

"The School Land Board is subject to the Texas Sunset Act [art. 5429k]; and unless continued in existence as provided by that Act the board is abolished effective September 1, 1985."

Art. 5421c-4. Easements or Surface Leases of Gulf Lands to United States for National Defense; Authority of School Land Board

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421c-5. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Art. 5421c-6. Patents Validated

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5421c-7, 5421c-8. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5421c-9. Sale of School Land; Extension of Time for Payment of Notes or Obligations

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5421c-10, 5421c-11. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Art. 5421c-12. Publication of Notice of Intended Sale or Trade of Land by Political Subdivision

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

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. 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. 1A. If the State of Texas retains the subsurface mineral rights to all oil, gas, and other minerals in public free school fund land traded under Section 1 of this Act, an unrestricted right of ingress to and egress from the land by the state and its lessees shall be retained for the purpose of exploration, development, and production of the oil, gas, and other minerals to which rights are retained by the state. The state is entitled to lease the subsurface mineral rights retained under this section in the same manner and under the same conditions as subsurface mineral rights in permanent school fund land in which the state owns the surface title and the subsurface mineral rights. A lessee of the subsurface mineral rights retained under this section is liable to the owner of the land for actual damages to the land that may occur as a result of exploration

for and development and production of the oil, gas, and other minerals to which rights are retained under this section. Notwithstanding anything to the contrary in this article, the School Land Board, in order to consummate a trade of equal value, is given the discretionary right to convey the surface estate and to reserve all the oil, gas, and other minerals with the surface owner acting as agent for the state under what is commonly known as the Relinquishment Act,¹ thereby receiving one-half the bonus, rental, and royalty as agent for the state in leasing the land and for surface damages in the leasing of oil and gas. The surface owner shall also receive 40 percent of the bonus, rental, and royalty for leasing and as compensation for surface damages for all leases negotiated by such agent covering sulphur, coal, lignite, uranium, and potash as set out under Chapter 16, Acts of the 62nd Legislature, Regular Session, 1967, as amended (Article 5421c-10, Vernon's Texas Civil Statutes).²

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; Acts 1977, 65th Leg., p. 823, ch. 307, §§ 1, 2, eff. Aug. 29, 1977.]

¹ See Natural Resources Code, § 52.171 et seq.

² Repealed; see, now, Natural Resources Code, § 53.061 et seq.

Saved from Repeal

This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421d. Patents to Lands Formerly Claimed as in New Mexico

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421e. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Art. 5421f. Extension of Payment of Unpaid Balances of Principal on Purchases of School Lands

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421f-1. Extension of Time for Payment of Installments of Principal of School Land Purchase Contracts

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421f-2. Reinstatement of Claims to Lands Forfeited Under Article 5326

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421i. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Art. 5421j. Grant of Filled-in Land to City of Corpus Christi

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421j-1. Lease of Filled-in Land by City of Corpus Christi

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421j-2. Lease by City of Corpus Christi of Submerged Lands Previously Relinquished to City by State

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421k. Submerged Lands Across Nueces Bay and Pass Conveyed to State Highway Commission

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421k-1. Conveyance of Lands to Widen State Highway No. 24 in Denton County

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421k-2. Submerged Right-of-Way Across Cayo Del Oso in Nueces County; Conveyance to State Highway Commission

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421k-3. Sale of Land in Cayo Del Oso to City of Corpus Christi; Validation

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421l. Control of Certain Property in Austin Transferred to University Regents

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5421m, 5421n. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 5421m was amended by Acts 1975, 64th Leg., p. 158, ch. 67, § 1.

Without reference to repeal of art. 5421m, Acts 1977, 65th Leg., p. 1845, ch. 735, § 2.098, added § 2(D) thereto, which reads:

"The Veterans' Land Board is subject to the Texas Sunset Act [art. 5429k], but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1985 and of every 12th year after 1985 are reviewed."

Art. 5421o. Oil, Gas and Mineral Leases by Cities, Towns and Political Subdivisions; Failure to Publish Notice of Intent; Effect

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421p. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Prior to repeal, this article was amended by Acts 1975, 64th Leg., p. 1234, ch. 459, §§ 1, 2.

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.]

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421r. Lists of Public Lands for Sale or Lease; Reproducing, Preparing, Selling or Furnishing

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421s. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

The repealed article, the Geothermal Resources Act of 1975, was enacted by Acts 1975, 64th Leg., p. 592, ch. 243.

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.

Application of Sunset Act

Sec. 1a. The Texas Indian Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1989.

¹ Article 5429k.

Members of Commission

Sec. 2. The commission consists of three members, one of whom shall be an Indian, 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 three 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 one at the Tigua Indian Reservation, and one in the Dallas area 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 authorized 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.

Assistance to Kickapoo Indians and Intertribal Indian Organizations

Sec. 11A. (a) The Traditional Kickapoo Indians of Texas are recognized as a Texas Indian tribe.

(b) The commission shall assist the Traditional Kickapoo Indians and the intertribal Indian organizations chartered in this state in applying for and managing, jointly with the commission, federal programs and funds secured from the federal government or private sources for the purpose of improving health, education, and housing standards of these Indians or increasing their economic capabilities.

(c) The commission may seek the cooperation of local and state agencies in administering programs or funds covered by Subsection (b) of this section.

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 appropri-

ate 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 au-

thority of Chapter XLIV, Acts of the 5th Legislature, 1854.

[Amended by Acts 1975, 64th Leg., p. 435, ch. 185, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1090, ch. 399, §§ 1, 2, eff. June 15, 1977; Acts 1977, 65th Leg., p. 1854, ch. 735, § 2.160, eff. Aug. 29, 1977.]

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Section 2 of the 1975 Act repealed art. 5421z-1; § 3 thereof provided: "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."

The 1977 Act, amending §§ 2 and 5 of this article, and adding § 11A, provides in § 3 as follows:

"Those persons holding office as members of the Texas Indian Commission 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

Article

- 5429g. Cooperation between Legislative Houses and Agencies [NEW].
- 5429h. State of the Judiciary Message by Supreme Court Chief Justice [NEW].
- 5429i. Economic Impact Statement Act [NEW].
- 5429j. Biennial Reports by Governor on Organization and Efficiency [NEW].
- 5429k. Sunset Act [NEW].

Art. 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. 5429b. Texas Legislative Council

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

Application of Sunset Act

Sec. 1a. The State Legislative Council is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the council is abolished, and this Act expires effective September 1, 1989.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 2 to 9]

[Amended by Acts 1977, 65th Leg., p. 1854, ch. 735, § 2.163, eff. Aug. 29, 1977.]

Art. 5429c. Legislative Budget Board

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

Application of Sunset Act

Sec. 1a. The Legislative Budget Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1989.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 2 to 6]

[Amended by Acts 1977, 65th Leg., p. 1854, ch. 735, § 2.162, eff. Aug. 29, 1977.]

Art. 5429f. Legislative Reorganization Act of 1961

[See Compact Edition, Volume 5 for text of 1 to 12]

Refusal to Testify

Sec. 13. No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he shall be examined by either House of the Legislature, or by any Committee of either House, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous. Any person called upon to testify or to give testimony or to produce papers upon any matter under inquiry before either House or in the committee of either House of the Legislature or Joint Committee of both Houses, who refuses to testify, give testimony or produce papers upon any matter under inquiry upon the ground that his testimony or the production of papers would incriminate him, or tend to incriminate him, may nevertheless be required to testify and to produce papers but when so required, over his objections for the reasons above set forth, such person shall not be subject to indictment or prosecution for any transaction, matter or thing concerning which he truthfully testified or produces evidence, documentary, or otherwise. Any person testifying before the Legislature or any committee thereof shall have the right to counsel.

[See Compact Edition, Volume 4 for text of 14 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; Acts 1977, 65th Leg., p. 1104, ch. 405, § 1, eff. Aug. 29, 1977.]

Art. 5429g. Cooperation between Legislative Houses and Agencies

Sec. 1. In this Act, "legislative agency" means:

- (1) the Senate;
- (2) the House of Representatives;
- (3) a committee, division, department, or office of the Senate or the House;
- (4) the Texas Legislative Council;
- (5) the Legislative Budget Board;
- (6) the Legislative Reference Library;
- (7) the State Auditor's Office; or
- (8) the Legislative Information System Committee.

Sec. 2. A legislative agency may provide administrative, professional, clerical, and other services to another legislative agency with or without reimbursement. Reimbursement, if any, shall be made pursuant to a written contract executed by the officer or officers who are authorized to execute contracts for each agency.

[Acts 1977, 65th Leg., p. 3, ch. 3, §§ 1, 2, eff. Feb. 23, 1977.]

Section 3 of the 1977 Act provided:

"From funds appropriated to the House of Representatives for the fiscal year ending August 31, 1977, there is hereby transferred and appropriated to the Texas Legislative Council the sum of \$125,000, and from funds appropriated by Section 10(e), Chapter 334, Acts of the 64th Legislature, Regular Session, 1975, there is hereby transferred and appropriated to the Texas Legislative Council the sum of \$250,000, to provide for document processing, printing, distribution, computer services, and other services for the legislature."

Art. 5429h. State of the Judiciary Message by Supreme Court Chief Justice

At a convenient time at the commencement of each regular session of the legislature, the chief justice of the supreme court of the state shall deliver a "state of the judiciary" message evaluating the accessibility of the courts to the citizens of the state and the future directions and needs of the courts of the state. It is the intent of the legislature that such "state of the judiciary" message promote better understanding between the legislative and judicial branches of government and thereby promote the more efficient administration of justice in Texas. [Acts 1977, 65th Leg., p. 172, ch. 83, § 1, eff. Aug. 29, 1977.]

Art. 5429i. Economic Impact Statement Act

Short Title

Sec. 1. This Act may be cited as the Economic Impact Statement Act.

Definition

Sec. 2. In this Act, "state agency" means:

- (1) any department, commission, board, office, or other agency that:
 - (A) is in the executive branch of state government;
 - (B) has authority that is not limited to a geographical portion of the state; and
 - (C) was created by the constitution or a statute of this state; or
- (2) 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.

State Policy

Sec. 3. The Legislature of the State of Texas, recognizing the impact of the laws, rules, and regulations of this state on the economy, employment, and enterprise of its people, hereby declares it to be the continuing policy of this state to maintain and create conditions which will sustain and promote the economy, employment, and economic opportunities of the people of Texas.

Economic Impact Statement

Sec. 4. (a) At the request of the lieutenant governor or the speaker of the house of representatives, a state agency shall prepare an economic impact statement for any pending bill or joint resolution that directly affects that agency. Preparation of the economic impact statement shall be coordinated through the director of the Legislative Budget Board.

(b) The economic impact statement shall include:

- (1) a brief description of the nature and effect of the proposal; and
- (2) the manner and extent to which the proposal, if implemented, will directly or indirectly during each of the two years following its effective date:
 - (A) affect employment in the state, including the number of people affected, the geographic area or areas affected, and the existing level of employment and unemployment in those areas;
 - (B) affect the construction, modification, alteration, or utilization of any structure, equipment, facility, process, or other asset in the state, the estimated dollar measure of the action, and the geographic area or areas affected;

(C) result in changes in costs of goods and services in the state;

(D) result in changes in revenue and expenditures of state and local governments;

(E) have economic impacts within the state other than those specifically described by this subsection.

(c) An economic impact statement that omits any information required by this Act shall specifically note its omission, state the reason for its omission, and estimate the additional time and effort required to obtain the information.

[Acts 1977, 65th Leg., p. 653, ch. 243, §§ 1 to 4, eff. May 25, 1977.]

Art. 5429j. Biennial Reports by Governor on Organization and Efficiency of State Agencies

Definitions

Sec. 1. In this Act:

(1) "State agency" means a department, commission, board, office, or other agency, except a university system or an institution of higher education as defined in Section 61.003, Texas Education Code, as amended, that:

(A) is in the executive branch of the state government;

(B) has authority that is not limited to a geographical portion of the state; and

(C) was created by the constitution or a statute of this state.

(2) "Functional area" means one of the following areas of concern to the state government: natural resources, health and human resources, education, economic development and transportation, agriculture, public protection, consumer protection, manpower, and other areas in which the governor creates an interagency planning council.

Governor's Report

Sec. 2. (a) Before the end of each even-numbered year, the governor shall prepare and submit to the legislature a report on the organization and efficiency of state agencies.

(b) In preparing the report, the governor shall use the staff of the Governor's Budget and Planning Office.

(c) In the report, the governor shall group state agencies into functional areas and shall include the following matters about the state agencies in each functional area;

(1) information regarding the efficiency with which the state agencies operate;

(2) recommendations regarding the reorganization of the state agencies and the consolidation, transfer, or abolition of their functions; and

(3) any other material relating to the organization or efficiency of state agencies that the governor considers necessary to include.

(d) The Legislative Budget Board shall coordinate the collection of information in this report.

Recommendations of Interagency Planning Councils

Sec. 3. (a) In preparing the report, the governor shall request and consider information from each interagency planning council regarding the efficiency of state agencies within the functional area represented by that interagency planning council and recommendations regarding the need for reorganization of state agencies within the functional area.

(b) Before submitting the report to the legislature, the governor shall present to each interagency planning council for review and comment the part of the proposed report dealing with the state agencies in the functional area represented by that interagency planning council, and the comments of each interagency planning council shall accompany the report when it is submitted to the legislature.

Preparation of Legislation

Sec. 4. The staff of the Texas Legislative Council shall draft any legislation required to put the governor's recommendations into effect.

[Acts 1977, 65th Leg., p. 939, ch. 350, §§ 1 to 4, eff. Aug. 29, 1977.]

Art. 5429k. Sunset Act

Short Title

Sec. 1.01. This Act may be cited as the Texas Sunset Act.

Definitions

Sec. 1.02. In this Act:

(1) "State agency" means:

(A) an agency that is expressly made subject to this Act; or

(B) a department, commission, board, or other agency (except a university system or an institution of higher education as defined in Section 61.003, Texas Education Code, as amended) that:

(i) is created by statute after January 1, 1977;

(ii) is part of any branch of state government; and

(iii) has authority that is not limited to a geographical portion of the state.

(2) "Advisory committee" means a committee, council, commission, or other entity created by or pursuant to state law whose primary function is to advise a state agency.

(3) "Commission" means the Sunset Advisory Commission.

Sunset Advisory Commission

Sec. 1.03. (a) The Sunset Advisory Commission is created.

(b) The commission is composed of four members of the senate appointed by the lieutenant governor and four members of the house appointed by the speaker of the house. Each appointing authority may designate himself as one of the four appointees.

(c) Members appointed by the lieutenant governor and the speaker of the house serve four-year terms, with terms staggered so that the terms of one-half of the membership from each house expire every two years. When making the initial appointments, the lieutenant governor and the speaker of the house shall determine which of their respective appointees serve two-year terms and which serve four-year terms. If the lieutenant governor or the speaker serves on the commission, he continues to serve until resignation from the commission or until he ceases to hold the office.

(d) Once a person has served six years on the commission, he is not eligible for appointment to another term or part of a term. A member who has served more than half of a full term may not be appointed to an immediately succeeding term. These restrictions do not apply to the lieutenant governor or the speaker of the house.

(e) Each appointing authority shall make his appointments to the commission as soon as possible after final adjournment of the regular session.

(f) A member of the commission vacates his position on the commission when he ceases to be a member of the house from which he was appointed.

(g) A vacancy on the commission shall be filled for the unexpired part of the term in the same manner as the original appointment.

(h) The members of the commission elect a chairman every two years from among their members. The chairmanship must alternate between the house and senate.

(i) A quorum shall consist of at least six members, three of whom must be appointees of the lieutenant governor, and three of whom must be appointees of the speaker of the house. No final action or recommendation may be made unless approved by a record vote of a majority of the full membership of the appointees of the lieutenant governor and of the appointees of the speaker of the house.

(j) Each member of the commission is entitled to reimbursement from the appropriate fund of the

member's respective house for the expenses he actually and necessarily incurs in performing the duties of the commission.

Staff

Sec. 1.04. (a) The personnel of the Performance and Evaluation Section, or its successor, of the Legislative Budget Board shall serve as the staff of the commission.

(b) In addition to the staff provided for under Subsection (a) of this section, the commission may employ other persons authorized by appropriations and necessary for administering the provisions of this Act.

Report on Advisory Committees

Sec. 1.05. Before October 30 of each calendar year, each state agency shall file an annual report with the Secretary of State to register all of its advisory committees and report the following information regarding the agency's advisory committees:

- (1) the official names of the advisory committees;
- (2) the statutory authority, if any, for the advisory committees;
- (3) the advisory committees' objectives and functions;
- (4) the period of time necessary for the advisory committees to carry out their objectives;
- (5) a reference to the reports that the advisory committees have presented to the agency;
- (6) the names and occupations of the current members of the advisory committees; and
- (7) other available information that will assist the staff and the commission to determine the need for continuing the advisory committees.

Agency Report to Commission

Sec. 1.06. Before October 30 of the odd-numbered year before the year a state agency is abolished according to this Act, the agency shall report to the commission:

- (1) information regarding the application to the agency of the criteria in Section 1.10 of this Act;
- (2) information specified in Section 1.05 of this Act regarding each of the agency's advisory committees; and
- (3) any other information that the agency considers appropriate or that is requested by the commission.

Commission Duties

Sec. 1.07. Before June 1 of the even-numbered year before the year a state agency and its advisory committees are abolished according to this Act, the commission shall:

(1) review and take action necessary to verify the reports submitted by the agency under Section 1.06 of this Act;

(2) consult the Legislative Budget Board, the Governor's Budget and Planning Office, the state auditor, and the comptroller of public accounts, or their successors, on the application to the agency of the criteria provided in Section 1.10 of this Act; and

(3) conduct a performance evaluation of the agency based on the criteria provided in Section 1.10 of this Act and prepare a written report, which is a public record.

Public Hearings

Sec. 1.08. Between June 1 and November 1 of the calendar year before the year a state agency and its advisory committees are abolished according to this Act, the commission shall conduct public hearings on but not limited to the application to the agency of the criteria provided in Section 1.10 of this Act, except that the commission may hold the public hearings before June 1 if the evaluation required by Section 1.07(3) of this Act has been completed and made available to the public.

Commission Report

Sec. 1.09. Before December 15 of the calendar year before the year a state agency and its advisory committees are abolished according to this Act, the commission shall present to the legislature and the governor a report on the agency and its advisory committees. In the report the commission shall include its specific findings with regard to each of the criteria set forth in Section 1.10 of this Act, its recommendations based on the matters set forth in Section 1.11 of this Act, and other information considered necessary by the commission for a complete evaluation of the agency.

Criteria for Review

Sec. 1.10. The staff and the commission shall consider the following criteria in determining whether a public need exists for the continuation of a state agency or its advisory committees or for the performance of the functions of the agency or its advisory committees:

(1) the efficiency with which the agency or advisory committee operates;

(2) an identification of the objectives intended for the agency or advisory committee and the problem or need which the agency or advisory committee was intended to address, the extent to which the objectives have been achieved, and any activities of the agency in addition to those granted by statute and the authority for these activities;

(3) an assessment of less restrictive or other alternative methods of performing any regulation that the agency performs which could adequately protect the public;

(4) the extent to which the advisory committee is needed and is used;

(5) the extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies and the extent to which the programs administered by the agency can be consolidated with the programs of other state agencies;

(6) whether the agency has recommended to the legislature statutory changes calculated to be of benefit to the public rather than to an occupation, business, or institution that the agency regulates;

(7) the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency;

(8) the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates, and the extent to which the public participation has resulted in rules compatible with the objectives of the agency;

(9) the extent to which the agency has complied with applicable requirements of an agency of the United States or of this state regarding equality of employment opportunity and the rights and privacy of individuals;

(10) the extent to which changes are necessary in the enabling statutes of the agency so that the agency can adequately comply with the criteria listed in this section;

(11) the extent to which the agency issues and enforces rules relating to potential conflict of interests of its employees;

(12) the extent to which the agency complies with the "Open Records Act," Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes), and with the "Open Meetings Act," Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes); and

(13) the impact in terms of federal intervention or loss of federal funds if the agency is abolished.

Recommendations

Sec. 1.11. In its report on a state agency, the commission shall:

(1) make recommendations on the abolition, continuation, or reorganization of each affected state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees;

(2) recommend appropriation levels for each state agency and advisory committee for which abolition or reorganization is recommended under Subdivision (1) of this section; and

(3) include drafts of legislation necessary to carry out the commission's recommendations under Subdivision (1) of this section.

Rules

Sec. 1.12. The commission shall adopt rules necessary to carry out this Act.

Abolition of Advisory Committees

Sec. 1.13. Except as otherwise expressly provided by law, every advisory committee whose primary function is to advise a particular state agency is abolished on the date set for abolition of the agency unless the advisory committee is expressly continued by law.

Agencies Created in Future

Sec. 1.14. Every state agency created by law enacted after January 1, 1977, is subject to this Act and to this section except as otherwise expressly provided by the law creating the agency. A state agency created by law enacted in a fiscal biennium is abolished at the end of the sixth succeeding fiscal biennium unless continued by law.

Continuation by Law

Sec. 1.15. (a) During the regular session immediately preceding the abolition of a state agency or an advisory committee that is subject to this Act, the legislature by law may continue the agency or advisory committee for a period not to exceed 12 years.

(b) Nothing in this Act shall be construed to prohibit the legislature from terminating a state agency or advisory committee subject to this Act at a date earlier than that provided in this Act. Nothing in this Act shall be construed to prohibit the legislature from considering any other legislation relative to a state agency or advisory committee subject to this Act.

Legislative Consideration

Sec. 1.16. (a) No more than one state agency and its functions and advisory committees may be considered for continuation, transfer, or modification in a bill, except that when consolidation of agencies or advisory committees or their functions is proposed, only the agencies or advisory committees involved in the consolidation may be considered in a legislative bill.

(b) In a bill to continue a state agency, to transfer its functions, or to consolidate it with another agency, the affected agency or agencies shall be mentioned in the title of the bill.

After Termination

Sec. 1.17. (a) On abolishment in the odd-numbered year, each state agency may continue in existence until September 1 of the next succeeding year for the purpose of concluding its business. Unless

otherwise provided by law abolishment does not reduce or otherwise limit the powers or authority of each respective state agency during such concluding year. Upon the expiration of the one-year period after abolishment each respective state agency is terminated and shall cease all activities.

(b) Any unobligated and unexpended appropriations of a state agency or advisory committee lapse on September 1 of the even-numbered year after abolishment of the agency or advisory committee.

(c) All money in a dedicated fund of an abolished state agency or advisory committee on September 1 of the even-numbered year after abolishment of the agency or advisory committee is transferred to the General Revenue Fund, except as provided in Subsection (f) of this section and as otherwise provided by law. The part of the law dedicating the money to a specific fund of an abolished agency becomes void on September 1 of the even-numbered year after abolishment of the agency.

(d) If an abolished state agency or advisory committee is funded in the General Appropriations Act for both years of the biennium, the abolished agency or advisory committee may not spend or obligate any of the money appropriated to it for the second year of the biennium, unless otherwise provided by law or rider in the appropriations bill.

(e) Property and records in the custody of a state agency or advisory committee on September 1 of the even-numbered year after abolishment of the agency or advisory committee are transferred to the State Board of Control, except that where an appropriate state agency is designated by the governor pursuant to Subsection (f) of this section, the property and records are transferred to the state agency so designated.

(f) The legislature recognizes the state's continuing obligation to pay bonded indebtedness incurred by any agency abolished by the terms of this Act, and it is not the intention of this Act to impair or impede the payment of bonded indebtedness in accordance with its terms. If an abolished state agency has remaining outstanding bonded indebtedness, the bonds remain valid and enforceable in accordance with their terms and subject to all applicable terms and conditions of the laws and proceedings authorizing the bonds, notwithstanding the abolishment of the agency that issued the bonds. The governor shall designate an appropriate state agency, which shall continue to carry out all covenants contained in the bonds and the proceedings authorizing them, including the issuance of bonds to complete the construction of projects, and shall provide payment from the sources of payment of the bonds in accordance with the terms of the bonds, whether

from taxes, revenues, or otherwise, until the bonds and interest on the bonds are paid in full. All funds established by laws or proceedings authorizing the bonds shall remain with the State Treasurer or previously designated trustees, if so provided in the proceedings; if not so provided, the funds shall be transferred to the designated state agency.

Subpoena Power

Sec. 1.18. The commission may issue process to witnesses at any place in the state and compel their attendance and the production of books, records, papers, and other objects that may be necessary or proper for the purposes of the committee proceedings. The commission may issue attachments when necessary to obtain compliance with subpoenas or other process, which may be addressed to and served by any peace officer in this state. The chairman of the commission shall issue, in the name of the commission, the subpoenas that a majority of the commission may direct. In the event the chairman is absent, the designee of the chairman is authorized to issue subpoenas or any other process in the same manner as the chairman. Witnesses attending proceedings of the commission under process are entitled to the same mileage and per diem as allowed witnesses before a grand jury in this state. The testimony taken under subpoena must be reduced to

writing and must be given under oath subject to the penalties of perjury.

Assistance of and Access to State Agencies

Sec. 1.19. (a) The commission may request the assistance of state agencies and officers, and they shall assist the commission when requested to do so.

(b) In carrying out their functions under this Act, the commission or its designated staff member may inspect the records, documents, and files of any state agency.

Relocation of Employees

Sec. 1.20. When an employee is displaced because of the abolishment, reorganization, or continuation of a state agency or its advisory committees, the agency and the Texas Employment Commission shall make a reasonable effort to relocate the displaced employee.

Saving Clause

Sec. 1.21. Except as otherwise expressly provided, abolition of a state agency does not affect rights and duties that matured, penalties that were incurred, civil or criminal liabilities that arose, or proceedings that were begun before the effective date of the abolition.

[Acts 1977, 65th Leg., p. 1826, ch. 735, art. I, §§ 1.01 to 1.21, eff. Aug. 29, 1977. Amended by Acts 1977, 65th Leg., 1st C.S., p. 56, ch. 3, § 1, eff. July 22, 1977.]

TITLE 89

LIBRARY AND HISTORICAL COMMISSION

Article

5434a. Application of Sunset Act [NEW].

5442c. Maintenance and Disposition of Certain County Records [NEW].

5446b. Central Media Depository for Individuals Unable to Use Ordinary Print [NEW].

Art. 5434a. Application of Sunset Act

The Texas Library and Historical Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1983. [Added by Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.082, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 5442c. Maintenance and Disposition of Certain County Records

Definitions

Sec. 1. In this Act:

(1) "County record" means any record required or authorized by law to be maintained in a county or precinct office or the office of district clerk.

(2) "Custodian" means the officer responsible for keeping a county record.

Records Manual

Sec. 2. (a) The state librarian shall direct the staff of the regional historical resource depository program in the preparation of a county records manual. Those preparing the manual shall consult with affected local officials and other interested persons.

(b) The manual shall list the various types of county records, state the minimum retention period prescribed by law for those records for which a minimum retention period is so prescribed, and prescribe a minimum retention period for all other county records except those subject to Section 8 of this Act. When the manual takes effect, those retention periods prescribed by it for county records for which no retention period is prescribed by law have the same effect as if they were prescribed by law.

(c) The manual also shall contain information to assist local officials in carrying out their functions

under this Act, including model records schedules and implementation plans, and may prescribe rules consistent with this Act governing the disposition of obsolete county records.

(d) The manual has no legal effect until it is approved by a majority of the members of a review committee constituted as provided in Section 3 of this Act. The committee's approval is effective when a copy of the manual and a statement of its approval, signed and acknowledged by a majority of the members of the committee, is filed in the office of the Secretary of State.

(e) The state librarian may amend the manual from time to time. An amendment is effective when the state librarian files a certified copy of the amendment in the office of the Secretary of State, except that an amendment must first be approved by a review committee in the same manner as provided for approval of the original manual if it:

(1) prescribes a minimum retention period for a county record required by law to be kept and for which a minimum retention period is not prescribed by state law;

(2) changes a minimum retention period established by the manual; or

(3) changes the rules governing disposition of obsolete county records.

Review Committee

Sec. 3. (a) A review committee required under this Act is composed of:

(1) the state librarian, who is chairman of the committee;

(2) the attorney general;

(3) a representative of the Texas Historical Commission, appointed by the commission; and

(4) one county clerk; one district clerk; one county judge or county commissioner; one county auditor; one county, district, or criminal district attorney; one county treasurer; one sheriff; and one county assessor-collector of taxes, each of whom shall be appointed by the state librarian.

(b) Except as provided in Subsection (d) of this section, an officer is eligible for appointment to the

review committee under Subdivision (4), Subsection (a) of this section only if:

(1) he has been nominated by a petition signed by at least 50 other officers of the type nominated; or

(2) he has been nominated by an organization representing officers of the type nominated that has as members at least 50 of those officers.

(c) For the purposes of Subsection (b) of this section, county judges and commissioners are of the same type and county, district, and criminal district attorneys are of the same type.

(d) At least 30 days before making an appointment under Subdivision (4), Subsection (a) of this section, the state librarian shall cause to be published in the Texas Register a notice of his intention to make the appointment. If the state librarian does not receive a nomination for a particular type of officer meeting the requirements of Subsection (b) of this section before the 31st day after the notice is published, a nomination is not required.

(e) Service on a review committee by a public officer is an additional duty of his office.

(f) Members of the committee receive no compensation, but they are entitled to be paid their actual expenses incurred on committee business. The payment of the expenses of the attorney general and the representative of the Texas Historical Commission shall be paid from funds of the attorney general's office and the commission, respectively. The payment of the expenses of other members of the committee shall be from funds of the Texas Library and Historical Commission.

(g) A review committee ceases to exist when it completes the work for which it was constituted unless it is sooner discharged by the state librarian.

Records Schedule and Implementation Plan

Sec. 4. (a) A custodian of county records may prepare a records schedule applicable to his office and a plan for its implementation. On the request of the custodian, the state librarian and the staff of the regional historical resource depository program shall assist the custodian in this regard by furnishing him recommended model records schedules and implementation plans and other information.

(b) A records schedule, if prepared, shall contain an inventory of county records kept by the custodian. It shall prescribe a minimum retention period for each type of record. The retention period for each type of record must be at least as long as that prescribed by law or established in the county records manual.

(c) If a custodian prepares a records schedule, he shall also prepare an implementation plan that prescribes, in conformity with this Act, the manner and procedure for disposing of records no longer needed on the expiration of the applicable retention period.

(d) The records schedule and implementation plan take effect when the custodian files a certified copy of the schedule and plan in the office of the county clerk. The custodian may amend an existing schedule or plan. An amendment takes effect when the custodian files a certified copy of it in the office of the county clerk.

Disposition of Obsolete Records

Sec. 5. (a) When the retention period expires for a county record subject to an approved records schedule and implementation plan, and in the judgment of the custodian the record is no longer needed, he may dispose of the record in accordance with the implementation plan, the county records manual, and the provisions of this Act.

(b) No county record may be destroyed pursuant to an implementation plan unless at least 60 days before the day it is destroyed the custodian gives written notice to the state librarian of his intention to destroy the record. The notice must sufficiently describe the record to enable the state librarian to determine if it should be transferred to the state library for preservation in a regional historical resource depository. If the state librarian requests that a record be transferred, the custodian shall comply with the request. Otherwise, the record may be destroyed.

(c) County records may be destroyed only by the sale of them for recycling purposes or by shredding them or burning them. Regardless of the method used, adequate safeguards must be employed to insure that they do not remain in their original state and are no longer recognizable as county records.

(d) No later than the 10th day before records are destroyed, the custodian shall file and record with the county clerk a notice stating which records are to be destroyed, how they are to be destroyed, and the date they are to be destroyed. The same day the notice is filed, the county clerk shall post a copy of it in the same manner that notices of meetings are posted under Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes).

(e) No person is civilly liable for the destruction of a record in accordance with this Act and an approved records schedule and implementation plan.

Transferral of Records to State Library

Sec. 6. (a) A custodian may transfer to the state library for preservation in a regional historical resource depository any county record that is not needed for administrative purposes.

(b) When a custodian transfers a county record to the state library under Subsection (a) of this section or under Subsection (b), Section 5 of this Act, the state librarian shall give the custodian a receipt for

the record. The custodian is not required to make a microfilm or other copy of the record before transferring it.

(c) The state librarian may make certified copies of county records that have been transferred to the state library. Each certified copy shall state that it is a true and correct copy of the record in the state librarian's custody. A certified copy made under the authority of this subsection has the same force and effect for all purposes as a copy certified by the county clerk or other custodian as provided by law.

Microfilming of Records

Sec. 7. This Act does not require the microfilming of county records, but an implementation plan may include provision for microfilming of records in accordance with other state law.

Exceptions

Sec. 8. This Act does not permit the establishment of a retention period for:

- (1) any county record that affects the title to real property, other than a recorded lien that is no longer enforceable;
- (2) a will;
- (3) the minutes of a commissioners court; or
- (4) the pleadings or any order, decree, or judgment, or any instrument incorporated by reference in an order, decree, or judgment, in a civil case in a court of record.

[Acts 1977, 65th Leg., p. 1198, ch. 463, §§ 1 to 8, eff. Aug. 29, 1977.]

Art. 5444a. Legislative Reference Library

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

Application of Sunset Act

Sec. 2a. The Legislative Reference Library is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the library is abolished, and this Act expires effective September 1, 1989.

¹ Article 5429K.

[See Compact Edition, Volume 4 for text of 3 to 9]

[Amended by Acts 1977, 65th Leg., p. 1855, ch. 735, § 2.164, eff. Aug. 29, 1977.]

Art. 5444b. State Law Library

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

Application of Sunset Act

Sec. 2a. The State Law Library is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the library is abolished, and this Act expires effective September 1, 1987.

¹ Article 5429K.

[See Compact Edition, Volume 4 for text of 3 to 9]

[Amended by Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.141, eff. Aug. 29, 1977.]

Art. 5446a. Library Systems Act

[See Compact Edition, Volume 4 for text of 1 to 5]

CHAPTER C. MAJOR RESOURCE SYSTEM

[See Compact Edition, Volume 4 for text of 6]

Membership in System

Sec. 7.

[See Compact Edition, Volume 5 for text of 7(a)]

(b) To meet population change, economic change, and changing service strengths of member libraries, a major resource system may be reorganized, merged with another system, or partially transferred to another system by the Commission with the approval of the majority of the appropriate governing bodies of the libraries comprising the system.

[See Compact Edition, Volume 4 for text of 8]

Withdrawal From Major Resource System

Sec. 9.

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

(b) The provision for termination of all or part of a major resource system does not prohibit revision of the system by the Commission, with the approval of the majority of the appropriate governing bodies, by reorganization, by transfer of part of the system, or by merger with other systems.

[See Compact Edition, Volume 4 for text of 9(c)]

Advisory Council

Sec. 10.

[See Compact Edition, Volume 5 for text of 10(a)]

(b) The governing body of each member library of the system shall elect or appoint a representative for the purpose of electing council members. The representatives shall meet following their selection and shall elect the initial council from their group. Thereafter, the representatives in an annual meeting shall elect members of their group to fill council vacancies arising due to expiration of terms of office. Other vacancies shall be filled for the unexpired term by the remaining members of the council. The major resource center shall always have one member on the council.

[See Compact Edition, Volume 4 for text of 10(c) to 14]

CHAPTER E. STATE GRANTS-IN-AID TO LIBRARIES

[See Compact Edition, Volume 4 for text of 14 to 16]

Funding

Sec. 17.

[See Compact Edition, Volume 5 for text of 17(a) and (b)]

(c) State grants may not be used for site acquisition, construction, or for acquisition of buildings, or for payment of past debts.

[See Compact Edition, Volume 4 for text of 17(d) to 19]

[Amended by Acts 1977, 65th Leg., p. 809, ch. 301, §§ 1 to 4, eff. Aug. 29, 1977.]

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 arrangements 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 \$25,000 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 residence, 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; Acts 1977, 65th Leg., p. 2028, ch. 809, § 2, eff. Aug. 29, 1977.]

TITLE 91

LIMITATIONS

1. LIMITATIONS OF ACTIONS FOR LANDS

Article

5523b. Attorney's Fees in Land Possession Suits [NEW].

3. GENERAL PROVISIONS

5539d. Statutes of Limitations Ending on Weekend or Holiday [NEW].

1. LIMITATIONS OF ACTIONS FOR LANDS

Art. 5523b. Attorney's Fees in Land Possession Suits

Sec. 1. Subject to the provisions of Section 2 of this Act, if, in an action for possession of land between a party claiming under the record title to the land and a party claiming by adverse possession, the prevailing party recovers possession from a party unlawfully in actual possession, the court may award reasonable attorney's fees to the prevailing party, in addition to his claim, if any, and costs of suit.

Sec. 2. (a) To recover attorney's fees as provided in Section 1 of this Act, the party seeking recovery of possession must give the party unlawfully in possession written notice and demand to vacate the premises, by registered or certified mail, at least 10 days prior to filing the claim for the recovery of possession.

(b) In the written notice and demand to vacate the premises, the party seeking recovery of possession shall give notice that in the event the party unlawfully in possession has not vacated the premises within 10 days and a claim is filed by the party seeking recovery of possession, judgment may be entered against the party unlawfully in possession for attorney's fees in an amount determined by the court to be reasonable, plus costs of suit.

[Acts 1977, 65th Leg., p. 1105, ch. 406, §§ 1, 2, eff. Aug. 29, 1977.]

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.]

3. GENERAL PROVISIONS

Art. 5539d. Statutes of Limitations Ending on Weekend or Holiday

If the last day of a limitations period under any statute of limitations falls on a Saturday, Sunday, or holiday, the period for filing suit is extended to the next day that the offices of the county are open for business.

[Acts 1977, 65th Leg., p. 1403, ch. 567, § 1, eff. Aug. 29, 1977.]

TITLE 92

MENTAL HEALTH

Subtitle	Article
I. Mental Health Code	5547-1
II. Mental Health and Retardation Act	5547-201
III. Mentally Retarded Persons Act [New]	5547-300
IV. Miscellaneous Provisions	5557

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

(a) The county from which a patient is committed under an Order of Temporary Hospitalization shall pay the costs of Temporary Hospitalization, Indefinite Commitment and Reexamination and Hearing proceedings, including attorneys' fees and physicians' examination fees, and expenses of transportation to a State mental hospital or to an agency of the United States. If a patient under Order of Temporary Hospitalization requires indefinite commitment, the court from which the patient was committed shall arrange with the appropriate court of the county in which the patient is hospitalized for a hearing on indefinite commitment to be held before the date of expiration of the temporary commitment, or the county in which the committing court is located shall pay the expenses of transportation of the patient back to the county of the committing court for such hearing.

(b) For the amounts of these costs actually paid, the county is entitled to reimbursement by the patient or any person or estate liable for his support in a State hospital.

(c) Unless the patient or someone responsible for him is able to do so, the State shall pay the cost of transportation home of a discharged patient and the return of a patient absent without authority.

(d) Neither the county nor the State shall pay any costs for a patient committed to a private hospital. [Amended by Acts 1977, 65th Leg., p. 1469, ch. 596, § 3, eff. Sept. 1, 1977].

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

(a) 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 after 12:00 o'clock noon on Friday, or 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.

(b) Any person licensed to practice medicine in this state who has reason to believe and does believe that a person is mentally ill and because of such mental illness is likely to cause injury to himself or others if not immediately restrained may present such information in writing at any time to any magistrate, and if the facts so justify, the magistrate may issue a warrant ordering any health or peace officer to take such person into custody and immediately transport such person to the nearest state hospital, hospital, or other facility deemed suitable by such officer, except in no event 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 admission for such person, 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 after 12:00 o'clock noon on Friday, or 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; Acts 1977, 65th Leg., p. 1093, ch. 402, § 1, eff. Aug. 29, 1977.]

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; and

(b) 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; Acts 1977, 65th Leg., p. 1092, ch. 401, § 1, eff. Aug. 29, 1977.]

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, 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. An Order transferring a criminal defendant against whom all charges have been dismissed to the appropriate court for a hearing on temporary commitment pursuant to Section 7 of Article 46.02, Code of Criminal Procedure, 1965, shall state that all such charges have been dismissed and the Order shall serve as the Application for Temporary Hospitalization of the proposed patient.

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1470, ch. 596, § 4, eff. Sept. 1, 1977.]

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.

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 2, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1470, ch. 596, § 5, eff. Sept. 1, 1977.]

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, § 2, eff. June 19, 1975.]

PART 3. INDEFINITE COMMITMENT

Art. 5547-40. Prerequisite to Commitment

No person may be committed to a mental hospital for an indefinite period unless he 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 or unless he has been under observation and/or treatment in a mental hospital under an Order entered pursuant to Section 5 of Article 46.02, Code of Criminal Procedure, 1965, for at least sixty (60) days within the twelve (12) months immediately preceding the date of the indefinite commitment hearing.

[Amended by Acts 1977, 65th Leg., p. 1471, ch. 596, § 6, eff. Sept. 1, 1977.]

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, the county from which he is temporarily committed, 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.

(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 or that he has been under observation and/or treatment in a mental hospital under an Order entered pursuant to Section 5 of Article 46.02, Code of Criminal Procedure, 1965, for at least sixty (60) days within the twelve (12) months immediately preceding the date of the indefinite commitment hearing.

(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.

(8) An Order transferring a criminal defendant against whom all charges have been dismissed to the appropriate court for a hearing on indefinite commitment pursuant to Section 7 of Article 46.02, Code of Criminal Procedure, 1965, shall state that all such charges have been dismissed and shall serve as the Petition for indefinite commitment of the proposed patient to a mental hospital.

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 3, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1471, ch. 596, § 7, eff. Sept. 1, 1977.]

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 _____
(date and time) (place)

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.

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; Acts 1977, 65th Leg., p. 1472, ch. 596, § 8, eff. Sept. 1, 1977.]

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.

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 5, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1472, ch. 596, § 9, eff. Sept. 1, 1977.]

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.]

Art. 5547-80. Discharge of Patients

(a) The head of a mental hospital may at any time discharge a patient if he determines after examination that the patient no longer requires hospitalization.

(b) The head of a mental hospital may at any time discharge a patient on furlough, and shall discharge a patient who has been on furlough status for a continuous period of eighteen (18) months.

(c) The head of a mental hospital may discharge a non-resident patient who has been absent without authority for a continuous period of thirty (30) days.

(d) The head of a mental hospital may discharge a resident patient who has been absent without authority for a continuous period of eighteen (18) months.

(e) Upon the discharge of a patient, the head of the mental hospital shall prepare a Certificate of Discharge stating the basis therefor. The Certificate of Discharge shall be filed with the committing court, if any, and a copy thereof delivered or mailed to the patient.

[Amended by Acts 1977, 65th Leg., p. 104, ch. 49, § 1, eff. Aug. 29, 1977.]

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 Department 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 and 2.01A]

Application of Sunset Act

Sec. 2.01B. The Texas Department of Mental Health and Mental Retardation is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the department is abolished, and this article expires effective September 1, 1985.

¹ Article 5429k.

[See Compact Edition, Volume 4 for text of 2.03 and 2.04]

Meetings of Board

Sec. 2.05. (a) The Board shall hold at least four regular meetings per year in the state capital on dates fixed by rule of the Board. The Board shall make rules providing for the holding of special meetings.

[See Compact Edition, Volume 4 for text of 2.05(b) 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.

Fees for Genetic Counseling Services

Sec. 2.25. The department is authorized to charge for genetic counseling services provided under the authority of this Act at a rate not to exceed the actual cost of providing such services. The proceeds from such charges shall be retained and utilized by the department for the continued provision of such services.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.01, eff. May 28, 1975; Acts 1977, 65th Leg., p. 340, ch. 166, § 1, eff. May 20, 1977; Acts 1977, 65th Leg., p. 1166, ch. 445, § 1, eff. June 15, 1977; Acts 1977, 65th Leg., p. 1847, ch. 735, § 2.106, eff. Aug. 29, 1977.]

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. MENTALLY RETARDED PERSONS ACT [NEW]

Art. 5547-300. Mentally Retarded Persons Act of 1977

SUBCHAPTER A. GENERAL PROVISIONS

Short Title

Sec. 1. This Act shall be known and may be cited as the Mentally Retarded Persons Act of 1977.

Purposes

Sec. 2. (a) It is the public policy of the state that mentally retarded persons should have the opportunity to develop to the fullest extent possible their potential for becoming productive members of society. Therefore, it is the purpose of this Act to provide and assure a continuum of quality services to meet the needs of all mentally retarded persons in this state. The responsibility placed upon the state shall not in any way replace or impede parental rights and responsibilities or terminate the activities of those persons, groups, and associations that advocate for and assist mentally retarded persons.

(b) The legislature recognizes that the preservation and promotion of home-living situations where feasible is desirable. When home-living situations are not possible and placement in a residential facility for mentally retarded persons is necessary, the legislature declares that those persons must be admitted in accordance with basic due process requirements, giving due consideration to parental desires where possible, to a facility which provides habilitative training for the person's condition, which fosters the personal development of the resident and enhances the person's ability to cope with the environment.

(c) Recognizing that persons have been denied rights solely on the basis of mental retardation, the legislature seeks to educate the general public to the fact that mentally retarded persons who have not been adjudicated incompetent and for whom a guardian has not been appointed by a due process proceeding in a court of law have the same rights and responsibilities enjoyed by all citizens of Texas. The legislature urges all citizens to assist mentally retarded persons in acquiring and maintaining their rights and in participating in community life as fully as possible.

SUBCHAPTER B. DEFINITIONS

Definitions

Sec. 3. As used in this Act:

(1) "Department" means the Texas Department of Mental Health and Mental Retardation.

(2) "Commissioner" means the Commissioner of Mental Health and Mental Retardation.

(3) "Director" means the director of a community center.

(4) "Superintendent" means the director of any residential care facility.

(5) "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period.

(6)(a) "Adaptive behavior" means the effectiveness or degree to which the individual meets the standards of personal independence and social responsibility expected of the person's age and cultural group.

(b) "Subaverage general intellectual functioning" refers to measured intelligence on standardized psychometric instruments of two or more standard deviations below the age-group mean for the tests used.

(7) "Mentally retarded person" means a person determined by a comprehensive diagnosis and evaluation to be of subaverage general intellectual functioning with deficits in adaptive behavior.

(8) "Mental retardation services" means programs and assistance for mentally retarded persons which may include, but shall not be limited to, diagnosis and evaluation, education, special training, supervision, care, treatment, rehabilitation, residential care, and counseling for mentally retarded persons, but shall not include those services or programs which have been explicitly delegated by law to other state agencies.

(9) "Service provider" means one who provides mental retardation services.

(10) "Community center" means an entity organized pursuant to Section 3.01 of the Texas Mental Health and Mental Retardation Act, as amended (Article 5547-201 to 5547-204, Vernon's Texas Civil Statutes), which provides mental retardation services.

(11) "Residential care facility" means any facility operated by the department or a community center that provides 24-hour services, including domiciliary services, directed toward enhancing the health, welfare, and development of persons with mental retardation.

(12) "Client" means a person receiving mental retardation services from the department or community center.

(13) "Resident" means a person living in and receiving services from a residential care facility of the department or a community center.

(14) "Group home" means a residential living arrangement for mentally retarded persons operated by the department or a community center in which not more than 15 persons voluntarily live and may share responsibilities for operation of the living unit with appropriate supervision. For the purpose of this Act, a group home is not a residential care facility.

(15) "Habilitation" means the process by which an individual is assisted to acquire and maintain those life skills which enable the person to cope more effectively with the demands of his person and environment and to raise the level of his physical, mental, and social efficiency. Habilitation includes, but is not limited to, programs of formal, structured education and training.

(16) "Treatment" means the process by which a service provider strives to ameliorate a mentally retarded person's condition.

(17) "Training" means the process by which a mentally retarded person is habilitated and may include teaching life skills and work skills.

(18) "Care" means the life support and maintenance services or other aid provided to mentally retarded persons and includes, but is not limited to, dental, medical, nursing, and similar services.

(19) "Labor" means all activity by one person that enures to the economic benefit of another, regardless of any direct or incidental therapeutic value to the client.

(20) "Legally adequate consent" means consent given by a person when each of the following conditions has been met:

(A) legal capacity: The person giving the consent is of the minimum legal age and has not been adjudicated incompetent to manage his personal affairs by an appropriate court of law;

(B) comprehension of information: The person giving the consent has been informed of and comprehends the nature, purpose, consequences, risks, and benefits of and alternatives to the procedure, and the fact that withholding or withdrawal of consent shall not prejudice the future provision of care and services to the client. Furthermore, in cases of unusual or hazardous treatment procedures, experimental research, organ transplantation, and nontherapeutic surgery, the person giving the consent has been informed of and comprehends the method to be used in the proposed procedure; and

(C) voluntariness: The consent has been given voluntarily and free from coercion and undue influence.

(21) "Minor" means a person under 18 years of age who is not and has not been married or who has not had his disabilities of minority removed for general purposes.

(22) "Guardian" means the person who, under court order, is the guardian of the person of another or the guardian of the estate of another.

(23) "Least restrictive alternative" means an available program or facility which is the least confining for the client's condition, and service and treatment which is provided in the least intrusive manner reasonably and humanely appropriate to the individual's needs.

(24) "Comprehensive diagnosis and evaluation" means a study including a sequence of observations and examinations of a person leading to conclusions and recommendations formulated jointly, with dissenting opinions, if any, by a diagnosis and evaluation team. The study shall include but not be restricted to a social and medical history, and medical, neurological, audiological, visual, educational, appropriate psychological, and sociological examinations, and an examination of the person's adaptive behavior level.

(25) "Diagnosis and evaluation team" means a group of persons with special training and experience in the diagnosis, management, and needs of mentally retarded persons, and shall be composed only of individuals who are certified pursuant to standards promulgated by the department and are professionally qualified in the fields necessary to perform the comprehensive diagnosis and evaluation.

(26) "Person" means an individual, firm, partnership, joint-stock company, joint venture, association, corporation, or governmental entity.

SUBCHAPTER C. BASIC BILL OF RIGHTS

Purpose

Sec. 4. The purpose of this subchapter is to recognize and protect the individual dignity and worth of mentally retarded persons.

Rights Guaranteed

Sec. 5. Every mentally retarded person in this state shall have the rights, benefits, and privileges guaranteed by the constitution and laws of the United States and the constitution and laws of the State of Texas. Clients shall enjoy the same rights as other citizens of the United States and Texas except when lawfully restricted. The rights of mentally retarded persons which are specifically enumerated in this Act are in addition to all other rights enjoyed by the mentally retarded, and such listing of rights is not exclusive or intended to limit in any way rights which are guaranteed to the mentally retarded under the laws and constitutions of the United States and the State of Texas.

Right to Protection from Exploitation and Abuse

Sec. 6. Every mentally retarded person shall have the right to protection from exploitation and abuse on the basis of mental retardation.

Right to Least Restrictive Living Environment

Sec. 7. Every mentally retarded person shall have the right to live in the least restrictive setting appropriate to his individual needs and abilities. This includes the person's right to live in a variety of living situations, such as the right to live alone, in a group home, with a family, and in a supervised, protective environment.

Right to Education

Sec. 8. Every mentally retarded person shall have the right to receive publicly supported educational services including, but not limited to, those services provided by the Texas Education Code. The services provided to every mentally retarded person shall be appropriate to his individual needs regardless of chronological age, degree of retardation, accompanying disabilities or handicaps, or admission or commitment to mental retardation services.

Right to Equal Opportunities in Employment

Sec. 9. No employer, employment agency, or labor organization shall deny a person equal opportunities in employment because of mental retardation except when:

- (1) based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise; and
- (2) the person's mental retardation significantly impairs his performance of the duties and tasks of the position for which he has made application.

Right to Equal Housing Opportunities

Sec. 10. No owner, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent, or lease any real property, or agency or employee of any of these shall refuse to sell, rent, or lease to any person or group of persons solely on the basis of mental retardation.

Right to Treatment and Habilitative Services

Sec. 11. Every mentally retarded person shall have the right to receive adequate treatment and habilitative services for mental retardation suited to the person's individual needs to maximize the person's capabilities and enhance the person's ability to cope with his environment. Such treatment and habilitative services shall be administered skillfully, safely, and humanely with full respect for the dignity and personal integrity of the person.

Right to Comprehensive Diagnosis and Evaluation

Sec. 12. (a) Any person thought to be mentally retarded shall have the right to receive promptly a comprehensive diagnosis and evaluation adapted to the cultural background, language, and ethnic origin of the person thought to be mentally retarded, to determine if the person is in need of mental retardation services. The diagnosis and evaluation team shall report its findings in writing and shall make written recommendations for needed services and placement based on those findings. The evaluation shall be performed at a facility approved by the department to conduct comprehensive diagnoses and evaluations nearest the home of the person being evaluated. If the person is indigent, the comprehensive diagnosis and evaluation shall be performed at the expense of the department at a facility designated by the department.

(b) A person who requests a comprehensive diagnosis and evaluation shall have the right to request and receive a prompt administrative hearing pursuant to Section 31 of Subchapter G of this Act for the purpose of contesting the findings of the diagnosis and evaluation team and to determine eligibility and need for mental retardation services.

(c) The person on whom the comprehensive diagnosis and evaluation is performed and any other person who requested the diagnosis and evaluation pursuant to Section 29 of Subchapter G of this Act shall have the right to an additional independent diagnosis and evaluation if such person questions the validity or results of the comprehensive diagnosis and evaluation.

Additional Rights

Sec. 13. Mentally retarded persons shall also have the following rights: right to presumption of competency, right to due process in guardianship proceedings, and right to fair compensation for labor.

SUBCHAPTER D. ADDITIONAL RIGHTS OF CLIENTS**Additional Rights**

Sec. 14. In addition to the rights guaranteed in Subchapter C of this Act, clients shall have the rights enumerated in this subchapter.

Right to Least Restrictive Alternative

Sec. 15. Each client shall have the right to live in the least restrictive habilitation setting appropriate to the individual's needs and be treated and served in the least intrusive manner appropriate to the individual's needs.

Right to Individualized Habilitation Plan

Sec. 16. Each client shall have the right to a written individualized habilitation plan. Each plan shall be developed by appropriate specialists with

the participation of the client and his parent, if a minor, or guardian of the person, and based on the relevant results of the comprehensive diagnosis and evaluation. Implementation of the plan shall begin as soon as possible, but no later than 30 days after the client's admission or commitment to mental retardation services. The content of an individualized habilitation plan shall be as required by the department.

Right to Periodic Review and Reevaluation

Sec. 17. (a) Every client shall have the right to review of the individualized habilitation plan to measure progress, to modify objectives and programs if necessary, and to provide guidance and remediation techniques. The review shall be made at least annually if the client has been placed in a residential care facility; the review shall be at least quarterly if the client has been admitted for services other than placement in a residential care facility.

(b) Every client shall have the right to a comprehensive rediagnosis and reevaluation periodically.

Right to be Informed and Participate in Planning

Sec. 18. Each client and parent of a minor or guardian of the person shall have the right to participate in planning with regard to the client's treatment and habilitation and to be informed in writing of progress at reasonable intervals. Whenever possible, the client or the parent of a minor or the guardian of the person shall be given the opportunity to decide among several appropriate alternative services available to the client from the service provider.

Right to Withdraw From Voluntary Mental Retardation Services

Sec. 19. A client, the parent if the client is a minor, or a guardian of the person shall have the right, subject to the exception of Section 36, Subchapter G of this Act, to withdraw the client from mental retardation services other than court commitment to a residential care facility.

Right to be Free from Mistreatment, Neglect, and Abuse

Sec. 20. Clients shall have the right to be free from mistreatment, neglect, and abuse by service providers.

Right to be Free from Unnecessary and Excessive Medication

Sec. 21. Each client shall have the right to be free from unnecessary and excessive medication. Medication shall not be used as punishment, for the convenience of the staff, as a substitute for a habilitation program, or in quantities that interfere with the client's habilitation program. Medication for each client shall be authorized only by the prescription of a physician and shall be closely supervised by a physician.

Right to Submit Grievances

Sec. 22. A client or any person acting on behalf of a mentally retarded person or group of mentally retarded persons shall have the right to submit to the appropriate public responsibility committee for investigation and appropriate action complaints or grievances against any person, group of persons, organization, or business regarding infringement of the rights of the mentally retarded person and delivery of mental retardation services.

Right to be Informed of Rights

Sec. 23. On admission for mental retardation services, each client and the parent of a minor or guardian of the person of each client shall be given written notice of the rights guaranteed by this Act in plain and simple language. In addition, each client shall be orally informed of these rights in plain and simple language. However, if a client is manifestly unable to comprehend these rights, notice to the parent of a minor or guardian of the person shall be sufficient.

SUBCHAPTER E. ADDITIONAL RIGHTS OF RESIDENTS

Right to Prompt and Adequate Medical and Dental Care and Treatment

Sec. 24. (a) Each resident shall have the right to prompt, adequate, and necessary medical and dental care and treatment for physical and mental ailments and for the prevention of any illness or disability. Subject to the limitations of his authority under this Act, the superintendent or director shall:

(1) provide such necessary care and treatment to all court-committed residents without further consent; provided, however, that consent shall be required for all surgical procedures.

(2) make available such necessary care and treatment to all voluntary residents.

(b) All medical and dental care and treatment shall be consistent with accepted standards of medical and dental practice in the community and shall be performed under appropriate supervision of licensed physicians or dentists.

(c) Nothing in this subchapter nor in this Act shall be construed to permit the department to perform unusual or hazardous treatment procedures, experimental research, organ transplantation, or nontherapeutic surgery for experimental research.

Additional Rights

Sec. 25. Residents shall also have the following rights: right to a normalized residential environment, right to humane physical environment, right to communication and visits, and right to personal property.

SUBCHAPTER F. RULES AND REGULATIONS

Rules and Regulations

Sec. 26. The department shall promulgate rules and regulations to ensure the implementation of the rights guaranteed in Subchapters C, D, and E of this Act.

SUBCHAPTER G. ADMISSION AND COMMITMENT TO MENTAL RETARDATION SERVICES

Admission

Sec. 27. Persons shall be admitted for mental retardation services offered by the department or community centers under the provisions of this Act only by the procedures prescribed in this subchapter.

Comprehensive Diagnosis and Evaluation Required

Sec. 28. (a) No person shall be eligible to receive mental retardation services, including but not limited to placement in a residential care facility, unless he shall first receive a comprehensive diagnosis and evaluation to determine the need and eligibility for mental retardation services, except as provided in Subsections (g) and (h) of Section 34 of this Act. The diagnosis and evaluation shall be performed at a diagnosis and evaluation center approved by the department.

(b) No person shall be voluntarily admitted for mental retardation services unless the comprehensive diagnosis and evaluation has been performed or updated within three months prior to the initial admission to services, except as provided in Subsections (g) and (h) of Section 34 of this Act.

(c) No person shall be determined to be in need of placement in a residential care facility by a court of law pursuant to Section 37 of this Act unless a comprehensive diagnosis and evaluation has been performed or updated within six months prior to the court hearing on the application for placement in a residential care facility. On receiving an application for placement in a residential care facility, the court shall order a comprehensive diagnosis and evaluation to be performed if a comprehensive diagnosis and evaluation has not been performed or updated within the previous six months.

Application for Diagnosis and Evaluation

Sec. 29. Any person believed to be mentally retarded or the parent of a minor or guardian of the person who is believed to be mentally retarded may make written application to the department on forms provided by the department for a comprehensive diagnosis and evaluation.

Report and Recommendations Required

Sec. 30. (a) Based on its comprehensive diagnosis and evaluation, the diagnosis and evaluation team shall prepare written findings and recommendations for needed services and appropriate placement.

(b) The report and recommendations shall include but not be limited to:

(1) summary of findings of the diagnosis and evaluation team;

(2) recommendations as to whether or not the individual needs mental retardation services; and

(3) recommendations of desirable or appropriate programs or placement consistent with the needs of the applicant.

(c) The report and recommendations shall be signed by each member of the diagnosis and evaluation team.

(d) If a court has ordered the comprehensive diagnosis and evaluation pursuant to Subsection (i) of Section 37 of this Act, the department shall promptly send a copy of the summary report and recommendations of the diagnosis and evaluation team to the court and to the person diagnosed and evaluated or the person's legal representative.

(e) If any person thought to be mentally retarded, parent of a minor, or guardian of the person requests the comprehensive diagnosis and evaluation pursuant to Section 29 of this Act, the person, parent of a minor, or guardian of the person shall be promptly notified of the findings of the diagnosis and evaluation team and its recommendations. The person, parent of a minor, and guardian of the person shall be informed of the right to an independent diagnosis and evaluation and the right to an administrative hearing for the purpose of contesting the findings or recommendations of the diagnosis and evaluation team if they are unsatisfactory.

Administrative Hearing

Sec. 31. (a) If the person, parent of a minor, or guardian of the person who requested the comprehensive diagnosis and evaluation wishes to contest the findings or recommendations of the diagnosis and evaluation team, he may request an administrative hearing by the agency conducting the diagnosis and evaluation. In addition to the requirements of this section, the department shall promulgate rules and regulations to implement the provisions of this section.

(b) The hearing shall be held as promptly as possible within 30 days and in a convenient location and with reasonable notice.

(c) The hearing shall be public unless the client or contestant requests a closed hearing.

(d) The proposed client and the contestant shall have the right to be present and represented at the hearing by any person of their choosing, including legal counsel.

(e) The proposed client, contestant, and representative shall have reasonable access at a reasonable time prior to the hearing to any records concerning

the proposed client on which the proposed action may be based.

(f) The proposed client, contestant, and representative shall have the right to present oral or written testimony and evidence, including the results of an independent diagnosis and evaluation, and shall have the right to examine witnesses.

(g) Any interested person may appear and give oral and written testimony.

(h) In all cases, the hearing officer shall promptly report to the parties in writing his decision and findings of fact and the basis for those findings.

(i) Any party to such hearing shall have the right to appeal without the necessity for filing a motion for rehearing with the hearing officer. The appeal shall be brought in the county court of Travis County or the county in which the proposed client resides. The appeal shall be by trial de novo and shall be given a preference setting over all other cases.

(j) The decision of the hearing officer shall be final within 30 days after the date of the decision unless a party files an appeal within such time. The filing of an appeal suspends the decision of the hearing officer, and no party may take any action based on such decision.

Application for Services

Sec. 32. (a) If the diagnosis and evaluation team recommends services, the client or the parent of a minor or guardian of the person may apply for needed services according to the provisions of Sections 33 and 34 of this Act.

(b) If the diagnosis and evaluation team recommends long-term placement in a residential care facility, the client, if an adult, the parent of a minor, or guardian of the person, the department, the court, any community center, or the agency which conducted the diagnosis and evaluation may file an application pursuant to Section 37 of this Act for a judicial determination that the alleged mentally retarded person is in need of long-term placement in a residential care facility.

Application for Voluntary Mental Retardation Services

Sec. 33. If the comprehensive diagnosis and evaluation as required by Section 30 of this Act indicates that the person diagnosed and evaluated is in need of voluntary mental retardation services, that person may be admitted to services as soon as appropriate services are available, and upon application for the services. The departmental facility or the community center shall develop a plan for appropriate programs or placement in programs or facilities approved or operated by the department. These programs or placements shall be suited to the needs of the proposed client and shall be consistent with the rights guaranteed in previous subchapters of this Act. The proposed client, his parent, if he is a

minor, and/or his guardian shall be encouraged and permitted to participate in the development of the planned programs or placements.

Application for Voluntary Residential Care Services

Sec. 34. (a) No person shall be admitted voluntarily to a residential care program except pursuant to the provisions of this section.

(b) When voluntary placement in a residential care facility is requested, preference shall be given to the facility located nearest to the residence of the proposed resident except when there are compelling reasons for placement elsewhere.

(c) Application for voluntary admission may be made by a proposed client, the parents of a minor child, or the guardian of the person.

(d) The application for voluntary admission shall be made according to rules and regulations of the department and shall contain a statement of the reasons that placement is requested.

(e) As used in this section, voluntary admissions shall be one or more of the following types:

(1) "Regular voluntary admission" for placement of a mentally retarded person, without a court proceeding, for treatment, training, and/or care.

(2) "Emergency admission" for placement of a mentally retarded person, without court proceedings, when there is an immediate and compelling need for short-term training, treatment, and/or care.

(3) "Respite care" for placement of a mentally retarded person, without court proceeding, to provide special assistance or relief to the mentally retarded person and/or his family for brief periods of time.

(f) Regular voluntary admissions shall be permitted only after a comprehensive diagnosis and evaluation, if:

(1) Space is available at the facility for which placement is requested.

(2) The superintendent or director of the facility determines that the facility can and does provide services that meet the needs of the proposed resident.

(g) Emergency admissions shall be permitted even though a comprehensive diagnosis and evaluation has not been performed if:

(1) there is persuasive evidence that the proposed resident is mentally retarded;

(2) space is available at the facility for which placement is requested;

(3) the superintendent or director of the facility determines that the facility can and does provide services that meet the needs of the proposed resident;

(4) there is an urgent need by the proposed resident for short-term placement and care which the facility provides;

(5) relief for the urgent need of the proposed resident can be afforded within a period of one year following admission; provided that a comprehensive diagnosis and evaluation is performed within 30 days following admission.

(h) Respite care shall be permitted even though a comprehensive diagnostic evaluation has not been performed if:

(1) there is persuasive evidence that the proposed resident is mentally retarded;

(2) space is available at the facility for which respite care is requested;

(3) the superintendent or director of the facility determines that the facility can and does provide services that meet the needs of the proposed resident;

(4) there is a need for the mentally retarded person and/or his family that urgently requires assistance or relief;

(5) that assistance or relief to the mentally retarded person and/or his family can be provided within a brief period of time, not to exceed 30 consecutive days following admission. If the relief sought by the mentally retarded person or his family has not been achieved in the 30-day period, one 30-day extension may be allowed if:

(A) The superintendent or director of the facility determines that the relief may be achieved in the additional time period, and

(B) The parties agreeing to the original placement consent to the extension. If the extension is not permitted, the resident shall be released immediately and application may be made for other services.

Voluntary Admission or Court Commitment of Minor Who Reaches Majority

Sec. 35. At the time a resident who was voluntarily admitted as a minor under Section 34 of this Act, and who continues to be in need of residential services, approaches the age of majority, the superintendent shall take action to insure that at majority one of the following actions is taken for admission or commitment of the resident:

(1) obtain legally adequate consent for admission from the resident or the guardian of the person, or

(2) file or cause to be filed an application for court commitment under Section 37 of this Act.

Withdrawal by Persons Voluntarily Admitted for Residential Care Services

Sec. 36. No person voluntarily admitted to a residential care facility may be detained more than 96 hours after he, his parents if he is a minor, or the

guardian of his person has requested discharge in accordance with rules and regulations promulgated by the department, unless:

(a) The superintendent or director of the facility determines that the condition of the person or other circumstances are such that the person cannot be discharged without endangering the safety of himself or the general public; and

(b) The superintendent or director files or causes to be filed an application for judicial commitment. For purposes of this Act, the county in which the facility is located shall be deemed as the county of residence of the proposed resident; and

(c) Pending a final determination on the application, the court may, upon a finding of good cause, issue an order of protective custody, ordering the resident to remain in the facility where he was voluntarily admitted, or other suitable place designated by the court as provided in Subsection (k) of Section 37 of this Act.

Commitment to a Residential Care Facility

Sec. 37. (a) No person shall be committed to a residential care facility under the provisions of this Act except pursuant to the provisions of this section.

(b) No person shall be committed to a residential care facility unless:

(1) the person is mentally retarded;

(2) evidence is presented showing that because of retardation, the person represents a substantial risk of physical impairment or injury to himself or others, or he is unable to provide for and is not providing for his most basic physical needs;

(3) the person cannot be adequately and appropriately habilitated in an available, less restrictive setting;

(4) the residential care facility does provide habilitative services, care, training, and treatment appropriate to the individual's needs; and

(5) the committing court finds that the conditions of this subsection have been met.

(c) When placement in a residential care facility becomes necessary, preference shall be given to the facility located nearest to the residence of the proposed resident except when no vacancy is available in the nearest facility, or the proposed resident, parent of a minor, or guardian of the person requests otherwise, or there are other compelling reasons.

(d) The procedure prescribed in the following subsections shall be used for commitment to a residential care facility.

(e) The county court shall have original jurisdiction of all judicial proceedings for commitment of mentally retarded persons to residential care facilities.

(f) An alleged mentally retarded person, the parent of a minor, the guardian of the person, or any other interested person may file with the county clerk of the county of residence of the alleged mentally retarded person an application for a determination that the alleged mentally retarded person is in need of long-term placement in a residential care facility.

(g) The application shall be executed under oath and shall set forth:

(1) the name, birthdate, sex, and residence address of the proposed resident;

(2) the name and residence address of the proposed resident's parent or guardian;

(3) a short and plain statement of the facts to show that commitment to a residential care facility is necessary and appropriate; and

(4) a short and plain statement explaining the inappropriateness of admission to less restrictive services.

(h) A copy of the summary report and recommendations of the diagnosis and evaluation team, if completed, shall be included in the application.

(i) On the filing of the application, the court shall immediately set a date for a hearing to determine the appropriateness of the commitment of the proposed resident to a residential care facility. The court shall also order an immediate comprehensive diagnosis and evaluation of the proposed resident unless such a comprehensive diagnosis and evaluation has been completed or updated within six months prior to the date of the scheduled hearing.

(j) Copies of the application, notice of the time and place of the hearing, and if appropriate, the order for the comprehensive diagnosis and evaluation shall be served on the proposed resident or his representative, the parent of a minor, guardian of the person, and the department not less than 10 days before the hearing. The notice shall also specify in plain and simple language the right to an independent diagnosis and evaluation as provided in Subsection (e) of Section 30 of this Act, as well as the provisions of Subsections (l) and (m) of this section.

(k) If the county court in which an application has been filed in accordance with this section finds, pursuant to certificates filed with the court, that the proposed resident is believed to be mentally retarded and 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 resident into protective custody and immediately transport him to a designated residential care facility when space is available or to a place deemed suitable by a county health officer, and detain him for a period not to exceed 20 days pending order of the court. No person may be detained in protective custody in a nonmedical facility used for the detention of per-

sons charged with or convicted of a crime, except because of and during an extreme emergency and in no case for a period longer than 24 hours. The county health officer shall see that a person held in protective custody receives proper care and medical attention pending removal to a residential care facility. The head of a facility in which a person is held under this subsection shall discharge such person within 20 days if the court has not issued further orders; provided, however, if the head of such facility believes the person is dangerous to himself or others, he shall immediately so advise the court which issued the order of protective custody.

(l) If the proposed resident cannot afford counsel, the court shall appoint an attorney not less than 10 days before the hearing. An attorney appointed pursuant to this section shall be entitled to a reasonable fee to be paid from the general fund of the county in which the proceeding is brought. In all cases the proposed resident's attorney shall represent the rights and legal interests of the proposed resident regardless of who may initiate the proceeding or pay the attorney's fees.

(m) A full hearing on the application shall be held as soon as practicable after the application is filed in accordance with the following procedures:

(1) The hearing shall be open to the public unless the proposed resident or his representative requests that the hearing be closed and the court determines there is good cause therefor.

(2) Any party to the proceedings may demand a jury, or the court on its own motion may order a jury. The Texas Rules of Civil Procedure shall apply to the selection of the jury, the court's charge to the jury, and all other aspects of the proceedings and trial except when inconsistent with the provisions of this section.

(3) The proposed resident shall have the right to be present throughout the entire proceeding. If the court shall determine that the presence of the proposed resident would result in harm to the proposed resident, then the court may waive the requirement of this subsection in writing, clearly stating the basis for the determination.

(4) The proposed resident shall be represented by counsel and be provided the right and opportunity to confront and cross-examine all witnesses. The parent of a minor or guardian of the person may also be represented by counsel.

(5) The usual rules of evidence shall apply. The results of the current diagnosis and evaluation shall be presented in evidence.

(6) The party who filed the application shall prove beyond a reasonable doubt that long-term placement of the proposed resident in a residential care facility is appropriate.

(7) In all cases, the court shall promptly report in writing its decision and findings of fact.

(n) If the court determines that long-term placement in a residential care facility is inappropriate, the court shall enter a finding to that effect, dismiss the application, and, if appropriate, recommend application for admission to voluntary services pursuant to Sections 32, 33, and 34 of this Act.

(o) If the court determines that long-term placement in a residential care facility is appropriate, the court shall order commitment of the proposed resident for care, treatment, and training to a community center or the department when space is available in a residential care facility, and the court shall immediately forward a copy of the commitment order to the department or community center.

(p) Any party shall have the right to appeal the judgment of the court to the appropriate court of civil appeals, and such appeals, if any, shall be controlled by the Texas Rules of Civil Procedure. Appeals pursuant to this section shall be given a preference setting. The county court may grant a stay of the commitment pending appeal.

(q) In no case shall an order for commitment be considered an adjudication of mental incompetency.

(r) When a resident committed to a residential care facility pursuant to the provisions of this section is absent from the assigned facility without permission from the proper authority, the superintendent or director of the facility may immediately issue an order authorizing any peace officer to detain the resident. When a peace officer takes a resident into custody, he shall immediately notify the superintendent or director. When requested by the superintendent or director, the peace officer shall cause the resident to be returned promptly to the assigned facility.

SUBCHAPTER I. TRANSFER AND DISCHARGE OF CLIENTS

Transfer and Discharge

Sec. 38. Transfer and discharge of clients shall be made only in accordance with the rules and regulations of the department and provisions of this subchapter. This subchapter shall not apply to transfers for emergency medical, dental, or psychiatric care for a period of time not to exceed 30 consecutive days, nor shall it apply to a voluntary withdrawal of a client from mental retardation services. This subchapter shall not apply to a discharge by a superintendent or director on the grounds that a person is not mentally retarded based upon a comprehensive diagnosis and evaluation, in which case a client shall be discharged without further hearings; provided, however, that the administrative hearing to contest the comprehensive diagnosis and evaluation provided for in Section 31 shall be available.

By Service Provider

Sec. 39. When a service provider finds that placement of a client in a facility is no longer appropriate to the person's individual needs or that the client can be better treated and habilitated in another facility, the service provider shall transfer or discharge the client pursuant to this subchapter.

Request of Client, Parent, Guardian

Sec. 40. A client or the parent of a minor or guardian of the person may request a transfer or discharge, and the service provider shall determine the appropriateness of the requested transfer or discharge. If such request is denied, the administrative hearing referred to in Section 41 shall be available.

Right to Administrative Hearing

Sec. 41. (a) A client shall not be transferred to another facility or discharged from any mental retardation services under this subchapter unless provided with a prior opportunity to request and receive an administrative hearing to contest the proposed transfer or discharge.

(b) No transfer of a client from one facility to another shall occur without prior approval and knowledge of the parents or guardian of the client.

Notice

Sec. 42. The client and the parent or guardian shall be given 30 days notice of the proposed transfer or discharge under this subchapter. The client and parent or guardian shall also be informed of the right to an administrative hearing for the purpose of contesting the proposed transfer or discharge.

Hearing to be Held

Sec. 43. If the client, parent of a minor, or guardian of the person wishes to contest the proposed or denied transfer or discharge, an administrative hearing shall be provided in accordance with the requirements of this section:

(a) The hearing shall be held as promptly as possible within 30 days and in a convenient location and with reasonable notice;

(b) The client, parent of a minor, guardian of the person, and the superintendent shall have the right to be present and represented at the hearing;

(c) The client, parent of a minor, and guardian of the person shall have reasonable access at a reasonable time prior to the hearing to any records concerning the client on which the proposed action may be based;

(d) Evidence shall be presented, which shall include oral and written testimony;

(e) In all cases the hearing officer shall promptly report his decision to the parties in

writing, including findings of fact and the basis for those findings;

(f) Any party to such hearing shall have the right to appeal without the necessity of filing a motion for rehearing with the hearing officer. The appeal shall be brought in the county court of Travis County or the county in which the proposed client resides. The appeal shall be by trial *de novo* and shall be given a preference setting over all other cases;

(g) The decision of the hearing officer shall be final within 30 days after the date of the decision, unless a party files an appeal within such time pursuant to Subsection (f). The filing of an appeal suspends the decision of the hearing officer, and no party may take any action based on such decision. If no appeal is filed from a final order that the request for transfer or discharge should be granted, the superintendent shall proceed with such transfer or discharge. If no appeal is filed from a final order that the request for transfer or discharge should be denied, the client shall remain in the same program or facility where he is presently receiving services.

Alternative, Follow-up Supportive Services

Sec. 44. The department shall provide appropriate alternative or follow-up supportive services consistent with available resources. Provision of alternative or follow-up supportive services shall be made by agreement between the department and the client, parent of a minor, or guardian of the person, and shall be consistent with the rights guaranteed in Subchapters C, D, and E of this Act. Placement in a residential care facility, under the provisions of this Act, other than by transfer from another residential care facility shall be made only pursuant to Sections 34 and 37 of this Act.

Leave, Furlough

Sec. 45. The superintendent or director of a residential care facility, shall have the authority to grant or deny a resident a leave of absence or furlough.

Transfer to Mental Hospitals

Sec. 46. (a) Voluntary Residents. No voluntary resident shall be transferred to a state mental hospital for other than the emergency care provided for in Section 38 of this Act without legally adequate consent to such transfer.

(b) The superintendent or director of a residential care facility shall have the authority according to the procedures of this subchapter to transfer a resident committed pursuant to Section 37 of this Act to a state mental hospital under the control and management of the department for mental health care when an examination of the resident by a licensed

physician indicates symptoms of mental illness to the extent that care, treatment, control, and rehabilitation in a state mental hospital would be in the best interest of the resident.

(c) For purposes of this Act, upon transfer of a court-committed resident to a state mental hospital, the director of the state mental hospital to which the resident was transferred shall immediately cause an evaluation of the resident's condition to be made. If at any time such an evaluation reveals that continued hospitalization is necessary for a period in excess of 30 days, the director shall promptly initiate appropriate court-ordered transfer proceedings in accordance with this section. In no event shall a resident transferred from a residential care facility to a state mental hospital remain in said hospital for more than 30 consecutive days unless such resident is transferred to the hospital under the provisions of this section.

(d) If a court-committed resident of a residential care facility requires hospitalization in excess of 30 consecutive days, the court transfer referred to in Subsection (c) above shall be accomplished in the following manner. The director of the state mental hospital shall request an order of transfer to the state mental hospital from the court which originally committed the resident to the residential care facility. In support of such request, the director of the state mental hospital shall forward Certificates of Medical Examination for Mental Illness as described in Article 5547-32 of the Texas Mental Health Code, as amended (Articles 5547-1 to 5547-204, Vernon's Texas Civil Statutes), completed by two physicians stating that the resident is mentally ill and requires observation and/or treatment in a mental hospital. Upon receipt of the director's request and the certificates of medical examination, the committing court shall set a date for a hearing on the proposed transfer. At least seven days prior to the date of the hearing, a copy of the transfer request and the notice of the hearing shall be personally served on the proposed patient. If the patient is a minor, notice shall also be served on his parents. If the patient has been declared to be incompetent under the Probate Code and a guardian for his person has been appointed, notice shall also be served on the guardian. A jury shall be had unless a waiver of trial by jury is made in writing under oath by the adult resident, his parent if a minor, or his guardian of the person. Notwithstanding the executed waiver, the jury shall determine the issues in the case if jury trial is demanded by the adult resident, his parent if a minor, his guardian of the person, or by his attorney at any time prior to determination of the hearing.

The county judge may hold a hearing on the petition at any suitable place within the county, but such hearing should be held in a physical setting not likely to have a harmful effect on the condition of

the resident. The resident shall not be denied the right to be present at the hearing, although the court may dispense with the presence of the resident if it is determined by the court to be in the resident's best interest. The hearing shall be open unless the court finds it in the best interests of the resident that the hearing be closed and the court obtains the consent of the adult resident, his parent if a minor, his guardian of the person, and his attorney for the closing of the hearing. At least two physicians, at least one of whom is a psychiatrist, who have examined the resident within the 15 days immediately preceding the hearing shall testify at the hearing. No person shall be transferred under this section to a mental hospital except upon the basis of competent medical or psychiatric testimony. The court or jury as the case may be shall determine:

- (1) whether the resident is mentally ill,
- (2) whether the resident requires a transfer to a state mental hospital for treatment for his own welfare and protection or the protection of others.

If the court or jury, as the case may be, finds that the patient is mentally ill and requires treatment in a state mental hospital for his own welfare and protection or the protection of others, the court shall issue an order approving the transfer of the resident to the state mental hospital.

(e) If the resident no longer requires treatment in a state mental hospital or a residential care facility, he shall be discharged. If he no longer requires treatment in a state mental hospital but requires treatment in a residential care facility, the superintendent or director of the residential care facility from which the resident is transferred shall be responsible for the immediate return of the resident to the residential care facility upon notification by the director of the mental hospital that hospitalization is no longer necessary or appropriate and that care in a residential care facility is required. If the resident has been transferred by a court to the state mental hospital under the provisions of this Act, the transfer to the residential care facility shall be made in accordance with the following provisions. The head of the state mental hospital shall forward a certificate evidencing that the resident is no longer in need of hospitalization in a state mental hospital but is still in need of care in a residential care facility due to a continuing diagnosis of mental retardation. The head of the state mental hospital shall request that the resident be transferred to a residential care facility. Such requested transfer shall be made only with the approval of the judge of the committing court by the entry of an order approving such transfer, in accordance with the provisions of Article 5547-75A of the Texas Mental Health Code.

Discharge from Residential Care Facility—Notice to Court

Sec. 47. On discharge of a resident committed pursuant to Section 37 of this Act, the department shall notify the committing court.

Habeas Corpus

Sec. 48. Nothing in this subchapter shall in any way alter or limit the right of a resident to a writ of habeas corpus.

Admission and Commitments Under Prior Law

Sec. 49. (a) Mentally retarded persons admitted or committed to facilities under the jurisdiction of the department under law previously in force may remain in the residential care facility unless and until such time as necessary and appropriate alternate placement is found or until such time as they can be admitted or committed to a facility under the provision of this Act if such readmission or commitment is necessary to meet the due process requirements of this Act.

(b) Except as hereinafter provided, a mentally retarded person voluntarily admitted to a residential care facility under laws previously in force shall be discharged within 96 hours of receipt by the superintendent or director of a written request from the person on whose application the mentally retarded person was admitted, or upon his own request. If, however, the superintendent or director deems the person's condition to be such that the person cannot be discharged with safety to himself or with safety to the general public, the superintendent or director may forthwith file or cause to be filed in the county in which the residential care facility is located an application for commitment under Section 37 of this Act. Pending a final determination of the application for commitment, the court may upon showing of good cause order the mentally retarded person placed in protective custody in the residential care facility as provided for in Subsection (k) of Section 37 of this Act.

SUBCHAPTER J. PUBLIC RESPONSIBILITY COMMITTEE

Rules and Regulations

Sec. 50. Pursuant to the provisions of this subchapter, the department shall promulgate rules and regulations to establish a third-party mechanism to safeguard adequately the legal rights of clients.

Creation

Sec. 51. A Public Responsibility Committee, hereinafter referred to as the committee, shall be established at each community center and residential care facility of the department.

Membership

Sec. 52. Each committee shall have seven members and shall have representation by parents,

guardians, consumer groups, persons, and organizations which advocate for mentally retarded persons and shall exclude employees of facilities of the department or community centers. Members must reside in the service region served by the facility.

Selection

Sec. 53. Members shall be selected in the following manner:

(a) For facilities of the department, members shall be selected by the executive committee of the Volunteer Services Council with consultation with the local parents' associations, if any.

(b) For community centers, members shall be selected by the local establishing agencies with consultation with the local parents' associations or interest groups, if any.

Meetings

Sec. 54. The committee shall meet not less than four times a year. A majority of members shall constitute a quorum.

Compensation

Sec. 55. Committee members shall serve without compensation other than reimbursement for actual expenses, including travel expenses necessarily incurred in the performance of their duties.

Powers and Duties of the Committee

Sec. 56. (a) The powers and duties of the committee shall be to:

(1) serve as a third-party mechanism for protecting and advocating for the health, safety, welfare, and legal and human rights of mentally retarded persons being served by the department or community center;

(2) receive and investigate complaints made to it by or on behalf of clients and make appropriate recommendations to the facility superintendent or director, to the deputy commissioner of the department with authority over the facility, to the commissioner of the department, and to the governing board as necessary;

(3) investigate and determine the denial of rights of any person receiving services;

(4) submit instances of abuse or denial of rights to the appropriate authorities and the advocacy system created under Section 203 of P.L. 94-103¹ for appropriate action.

(b) When investigating complaints of abuse or denial of rights of clients, the committee shall have the authority with or without notice to inspect the facility which offers services to the mentally retarded person and records relating to the diagnosis, evaluation, or treatment of the mentally retarded person, as those records relate to the complaint of abuse or denial of rights.

(c) Investigations and findings of the committee shall be kept confidential unless the committee orders the information released when legally adequate consent is obtained for its release.

(d) The committee shall present an annual report of its work to the commissioner, the executive director of the community center, the appropriate governing board, and the advocacy system created under Section 203 of P.L. 94-103 for the appropriate action. The report shall include a description of all complaints processed. The names of all individuals shall be kept confidential.

¹42 U.S.C.A. § 6012.

SUBCHAPTER K. CONFIDENTIALITY OF RECORDS

Confidentiality of Records

Sec. 57. (a) Records of the identity, diagnosis, evaluation, or treatment of any person which are maintained in connection with the performance of any program or activity relating to mental retardation shall be confidential and disclosed only for the purposes and under the circumstances expressly authorized under Subsection (b) of this section.

(b) The content of any record referred to in Subsection (a) of this section may be disclosed in accordance with the prior written consent of the person with respect to whom such record is maintained, or parent if such person is a minor, or guardian if the person has been adjudicated incompetent to manage his personal affairs, but only to such extent, under the circumstances, and for the purposes as may be allowed under the regulations prescribed pursuant to Subsection (h) of this section. The content of any record referred to in Subsection (a) of this section is to be made available upon the request of any person thought to be mentally retarded upon whose behalf the record was made unless the qualified professional responsible for supervising the client's habilitation states in a signed written statement that it would not be in the best interest of the person in question. However, the parent of a minor or guardian of the person shall have access to the contents of any record referred to in Subsection (a) of this section.

(c) Whether or not the person with respect to whom any given record referred to in Subsection (a) of this section is maintained gives his written consent, the content of such record may be disclosed as follows:

(1) to medical personnel to the extent necessary to meet a bona fide medical emergency;

(2) to qualified personnel for the purpose of management audits, financial audits, program evaluation, or research approved by the department, but such personnel may not identify, directly or indirectly, any individual receiving services in any report of such research, audit, or

evaluation, or otherwise disclose identities in any manner;

(3) if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the person receiving services. On the granting of the order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure; and

(4) to personnel legally authorized to conduct investigations concerning complaints of abuse or denial of rights of mentally retarded persons.

(d) Except as authorized by a court order granted under Subsection (c)(3) of this section, no record referred to in Subsection (a) of this section may be used to initiate or substantiate any criminal charges against a person receiving services or to conduct any investigation of a person receiving services.

(e) The prohibitions of this section continue to apply to records concerning any individual who has received services irrespective of when the person received services.

(f) The prohibitions of this section apply to any interchange of records between governmental agencies or persons, except for interchanges of information necessary for delivery of services to clients or for payment for mental retardation services as defined in this Act.

(g) A person who receives information deemed confidential by this section, other than the person thought to be mentally retarded on whose behalf the records are made, the parent of a minor, or guardian of the person shall not disclose the information except to the extent that disclosure is consistent with the authorized purpose for which the information was first obtained.

(h) The department shall prescribe regulations to carry out the purposes of this section. These regulations may contain such definitions and may provide for such safeguards and procedures as in the judgment of the department are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(i) Nothing contained in this subchapter shall prevent a qualified professional from disclosing the current physical and mental condition of a mentally retarded person to his or her parent, guardian, relatives, or friends.

SUBCHAPTER L. RESPONSIBILITY AND CO-OPERATION

Responsibility

Sec. 58. (a) The responsibility of the department under this Act shall be to make all reasonable efforts consistent with available resources:

(1) to assure that all mentally retarded persons identified and needing mental retardation services in the state are given quality care, treatment, education, training, and rehabilitation appropriate to their individual needs for as long as mental retardation services are needed, but shall not include those services or programs which have been explicitly delegated by law to other governmental entities;

(2) to initiate, carry out, and evaluate procedures to guarantee to mentally retarded persons the rights enumerated in this Act;

(3) to carry out all provisions of this Act, including planning, initiating, coordinating, promoting, and evaluating all programs developed. The responsibilities placed on the department by this Act shall be in addition to all other responsibilities and duties given by law to the department; and

(4) to provide either directly or by cooperation, negotiation, or contract with other agencies and those persons and groups enumerated in Section 2.13, Texas Mental Health and Mental Retardation Act (Articles 5547-201 to 5547-204, Vernon's Texas Civil Statutes), a continuum of services to mentally retarded persons. These services shall include but not be limited to treatment and care, education and training including sheltered workshop programs, counseling and guidance, and development of residential and other facilities to enable mentally retarded persons to live and be habilitated in the community. These facilities shall include but not be limited to group homes, foster homes, halfway houses, and day-care facilities for mentally retarded persons to which the department has assigned mentally retarded persons. The department shall exercise periodic and continuing supervision over the quality of services.

(5) to provide either directly or by contract with other agencies a continuum of services to those mentally retarded children, juveniles, or adults committed into its custody by the juvenile courts and/or the criminal courts.

(b) The department is hereby delegated the authority to carry out its responsibilities set forth in this Act.

(c) The responsibilities enumerated in this section shall be in addition to any other responsibilities placed on the department by Articles 2 and 3 of the Texas Mental Health and Mental Retardation Act,

as amended (Articles 5547-201 to 5547-204, Vernon's Texas Civil Statutes).

Cooperation

Sec. 59. Other agencies given legislative authority for providing all persons education, support, related services, rehabilitation, and other services shall cooperate with the department in carrying out its responsibilities under this Act. This does not require other departments and agencies to serve the department in activities inconsistent with their functions, with the authority of their offices, or with the laws of this state governing their activities.

SUBCHAPTER M. RULES AND REGULATIONS

Rules and Regulations

Sec. 60. The department shall promulgate written rules and regulations to ensure the implementation of the provisions of this Act.

SUBCHAPTER N. FEES, SUPPORT AND MAINTENANCE

Support and Maintenance of Residents

Sec. 61. (a) The parents of a mentally retarded person under 18 years of age who is a resident in a residential care facility operated by the department shall pay, if able to do so, the portions of the cost of support and maintenance of the mentally retarded person as may be applicable under the following formula:

If the amount shown as "Net Taxable Income" of the parents as reported on their latest current financial statement or on their latest Federal Income Tax return at the election of the parent or guardian is:	The Monthly payment per child shall not exceed:
Less than \$ 4,000	\$ 5
4,000-4,999	10
5,000-5,999	20
6,000-6,999	30
7,000-7,999	40
8,000-8,999	50
9,000-9,999	60
10,000-10,999	70
11,000-11,999	80
12,000-12,999	90
13,000-13,999	100
14,000-14,999	110
15,000-15,999	120
16,000-16,999	130
17,000-17,999	140
18,000-18,999	150
19,000-19,999	160
20,000-up	170

No payment under the above schedule shall exceed actual cost to the state per resident, and if the payment required under this schedule is more than actual cost, then the amount paid shall be the actual cost.

(b) Parents of a mentally retarded person who is 18 years of age or older shall not be required to pay for his support and maintenance as a resident in a residential care facility operated by the department, but the mentally retarded person and his estate shall be liable for his support and maintenance regardless of his age, except as provided in Subsection (g) of this section.

(c) The unpaid portion of charges for support and maintenance due before the effective date of this Act, under agreements made before the effective date of this Act, shall remain as obligations of parents under previous law, but such preexisting agreements for payment of support and maintenance shall be in force after the effective date of this Act only to the extent of parental responsibility set forth in the foregoing formula.

(d) Unpaid charges for support and maintenance accruing after the effective date of this Act due by parents for the support and maintenance of mentally retarded persons who are minors and residents in residential care facilities operated by the department shall be a claim in favor of the state for such support and maintenance, and shall constitute a lien against the parents' property and estate, but shall not constitute a lien against any other estate or property of the mentally retarded person.

(e) With respect to a mentally retarded person who is a resident in a residential care facility operated by the department, the cost of his support and maintenance may be determined under rules and regulations adopted by the department provided that total charges from all sources for support and maintenance shall not exceed the actual cost of such support and maintenance, and the costs determined under such rules and regulations shall constitute a claim by the state against the entire estate or any property of the mentally retarded person including but not limited to any share he may have by gift, descent, or devise in his parents' estates or any other person's estate, except as provided in Subsection (g) of this section.

(f) Nothing in this section shall alter or amend the liability and responsibility of any parent under orders of a court or otherwise liable for child support payments under the provisions of the Family Code.

(g) For the purposes of this subchapter no portion of the corpus or income of a trust or trusts, with an

aggregate principle amount not to exceed \$50,000, of which a mentally retarded person is a beneficiary shall be considered to be the property of such mentally retarded person or his estate, and no portion of the corpus or income of such trust shall be liable for the support and maintenance of such mentally retarded person regardless of his age.

Fees for Services

Sec. 62. The department shall charge reasonable fees to cover costs for services provided to nonindigent persons. It shall provide services free of charge to indigent persons.

SUBCHAPTER O. PENALTIES AND REMEDIES

Criminal Penalties

Sec. 63. (a) A person who intentionally or knowingly causes, conspires with, or assists another to cause the unlawful continued detention in, or unlawful admission or commitment of any individual to, a facility as specified in this Act with intention to do harm to that individual is guilty of a Class B misdemeanor.

(b) The district attorneys and county attorneys within their respective jurisdictions shall prosecute violations of this section.

Civil Penalties

Sec. 64. (a) A person who willfully and wrongfully violates the rights guaranteed in this Act of any mentally retarded person shall be liable to the person injured by the violation in an amount not less than \$100 nor more than \$5,000.

(b) A person who recklessly violates the rights guaranteed in this Act of any mentally retarded person shall be liable to the person injured by the violation in an amount not less than \$100 nor more than \$1,000.

(c) A person who willfully and wrongfully releases confidential information or records of a mentally retarded person shall be liable to the person injured by the unlawful disclosure for the greater of the following amounts:

- (1) \$1,000; or
- (2) three times the amount of actual damages, if any.

(d) An action filed under this section may be brought by the person injured, by a parent if the person is a minor, by a guardian if such person has been adjudicated incompetent, or by a next friend in accordance with Rule 44 of the Texas Rules of Civil Procedure.

(e) An action filed under this section may be commenced in the district court of the county in which the defendant resides, or in a district court of Travis County.

(f) Nothing in this section shall be intended or construed as superseding or abrogating any remedies otherwise available by law.

Injunctive Relief

Sec. 65. (a) The attorney general and the district attorneys and county attorneys within their respective jurisdictions may bring an action in the name of the state against any person to enjoin violations of, and to enforce compliance with, the provisions of this Act and any rules of the department promulgated thereunder.

(b) In granting relief the court may issue a temporary restraining order, a temporary injunction, or a permanent injunction to restrain and prevent violations of, and to enforce compliance with, the provisions of this Act and any rules of the department promulgated thereunder.

(c) A person who violates the terms of an injunction under this section shall forfeit and pay to the state a civil penalty of not more than \$5,000 per violation, not to exceed \$20,000. In determining whether or not an injunction has been violated, the court shall take into consideration the maintenance of procedures reasonably adopted to ensure compliance with the injunction. For the purposes of this section, the district court issuing the injunction shall retain jurisdiction, and the cause shall be continued, and in these cases, the attorney general or the district or county attorney, acting in the name of the state, may petition for recovery of civil penalties under this section.

(d) Any civil penalty recovered under this section shall be paid to the State of Texas for use in mental retardation services.

(e) An action filed under this section may be commenced in the district court of the county in which the defendant resides or in a district court of Travis County.

(f) Nothing in this section shall be intended or construed as superseding or abrogating any remedies otherwise available by law.

Civil Actions against Department Employees: Indemnity

Sec. 66. (a) The attorney general shall provide an attorney or attorneys for the defense of an employee of the department in any civil action commenced against him under this Act by reason of a claim of alleged negligence or other act of the person while employed by the department. The state shall save harmless and indemnify the person from financial loss arising out of any claim, demand, suit, or judgment by reason of the negligence or other act by the person, provided that at the time that the claim arose or damages were sustained, the person was acting in the discharge of his duties and within the scope of his authorized duties, and that the claim or cause of action or damages sustained

did not result from the willful and wrongful act or reckless conduct of the person. The state, however, shall not be subject to the obligations imposed by this section unless the person, within 10 days of the time he is served with any summons, complaint, process, notice, demand, or pleading, delivers the original or a copy thereof to the department.

(b) On the delivery, the attorney general may assume control of the representation of the person. The person shall cooperate fully with the attorney general in the defense of said claim, demand, or suit.

(c) This section shall not in any way impair, limit, or modify the rights and obligations under any policy of insurance.

(d) The benefits of this section shall enure only to the persons named herein and shall not enlarge or diminish the rights of any other party.

Liability

Sec. 67. Notwithstanding any other provision of this Act, an officer or employee of the department or a community center, acting reasonably within the scope of his employment and in good faith, shall be free from all civil or criminal liability under this Act.

SUBCHAPTER P. MISCELLANEOUS PROVISIONS

Effective Date

Sec. 68. This Act shall take effect on January 1, 1978.

Repealer

Sec. 69. Chapter 119, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 3871b, Vernon's Texas Civil Statutes), is repealed.

Saving Clause

Sec. 70. The repeal of any statute by this Act shall not affect or impair any act done, right existing or accrued, or conveyance made under the authority of the statute repealed; and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action concerning any such act, right, or conveyance. Proceedings begun before the effective date of this Act under prior provisions of the law relating to persons who would be deemed mentally retarded under this Act shall not be affected by provisions of this Act.

Severability Clause

Sec. 71. If any portion of this Act is declared invalid or unconstitutional, it is the intention of the legislature that the other portions shall remain in full force and effect, and to this end the provisions of this Act are declared to be severable.

[Acts 1977, 65th Leg., p. 772, ch. 294, §§ 1 to 71, eff. Jan. 1, 1978.]

IV. MISCELLANEOUS PROVISIONS

Art. 5561c. Alcoholism

[See Compact Edition, Volume 4 for text of 1 to 3]

Texas Commission on Alcoholism

Sec. 4.

[See Compact Edition, Volume 5 for text of 4(a) to (d)]

(e) The Texas Commission on Alcoholism is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1985.

¹Article 5429k.

[See Compact Edition, Volume 5 for text of 5 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 proposed 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 11]

Commitment by Courts

Sec. 12. The judge of any court, including a municipal court, having jurisdiction of misdemeanor cases may, upon finding a person guilty of any violation of the law, which violation is a misdemeanor resulting from such person's chronic and habitual use of alcohol, remand such person over eighteen (18) years of age to the Commission, its authorized representative, or a treatment facility approved by the Commission for alcoholic detoxification or treatment purposes, for care and treatment for a period not to exceed ninety (90) days, in lieu of the imposition of a sentence or fine, if and when special facilities are available for treatment of such cases, and with notice from the Commission that such facility will receive such person as a patient. No person may be so committed who in the opinion of the judge has exhibited definite criminal tendencies, or is feeble-minded or psychotic. Appeals from such orders of the court may be taken in the same manner as provided for appeals from any other judgment of such court.

[See Compact Edition, Volume 5 for text of 13 to 20]

[Amended by Acts 1975, 64th Leg., p. 254, ch. 104, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1160, ch. 440, § 1, eff. June 15, 1977; Acts 1977, 65th Leg., p. 1847, ch. 735, § 2.111, eff. Aug. 29, 1977.]

Art. 5561cc. Regulation of Health Care Facilities Treating Alcoholics

Definitions

Sec. 1. In this Act:

- (1) "Commission" means the Texas Commission on Alcoholism.
- (2) "Alcoholic" means any person who chronically and habitually uses alcoholic beverages to the extent that he has lost the power of self-control with respect to the use of the beverage or while chronically and habitually under the influence of alcoholic beverages endangers public morals, health, safety, or welfare.
- (3) "Alcoholism" means a condition of abnormal behavior or illness leading directly or indirectly to the chronic and habitual use of alcoholic beverages.

(4) "Person" includes any individual, partnership, corporation, association, or other public or private legal entity.

(5) "Health care facility" includes, regardless of ownership, a public or private hospital, institution, extended care facility, skilled nursing facility, intermediate care facility, home health agency, outpatient care facility, ambulatory health care facility, health center, 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 medical, mental or psychiatric, 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.

Licensing a Facility

Text of section effective September 1, 1978

Sec. 2. A person who operates a health care facility that treats alcoholics may obtain a license issued under this Act.

License Application

Sec. 3. An applicant for a license to operate a health care facility to treat alcoholics must:

- (1) file a written application on a form prescribed by the commission together with a license fee of \$25; and
- (2) Cooperate with the inspection of the health care facility.

Issuing a License

Sec. 4. The commission shall issue a license to a person who has:

- (1) complied with the license application requirements in Section 3 of this Act; and
- (2) received approval of the facility after an on-site inspection.

Renewal of Unexpired License

Sec. 5. (a) A license issued under this Act expires one year from the date of issue.

(b) A renewal license shall be issued on receiving a completed application form prescribed by the commission and payment of a \$25 renewal fee prior to the expiration date of the license.

(c) The commission may require an inspection before renewing a license.

Inspections

Sec. 6. The commission or its authorized representative may enter upon the premises at reasonable times to make an inspection necessary to license or renew a license for a facility.

Rules, Regulations, and Standards

Sec. 7. (a) The commission shall prescribe forms necessary to perform its duties and adopt rules, regulations, and standards for the following:

(1) the construction of the facility, including plumbing, heating, lighting, ventilation, and other housing conditions which insure the health, safety, and comfort of residents;

(2) the sanitary conditions of the facility and the surrounding area, including water supply, sewage disposal, food handling, and general hygiene;

(3) the equipment needed for adequate care and treatment;

(4) the diet required by the needs of residents, based on good nutritional practice and on recommendations made by physicians attending the residents; and

(5) the qualifications of all staff and personnel, including management and nursing personnel, having responsibility for any part of the care given to residents.

(b) The commission may adopt additional regulations for facilities concerning the treatment and care of alcoholics.

(c) The rules, regulations, and standards authorized by this Act apply to licensed facilities and to facilities for which a licensed application has been made.

Denial or Revocation of License

Sec. 8. (a) The commission may deny, revoke, or refuse to renew a license if the applicant or holder of the license fails to comply with the provisions of this Act or with the rules, regulations, and standards of the commission adopted under this Act.

(b) A person who is denied a license or whose license is revoked or not renewed is entitled to a hearing on the question of the issuance of the license and is entitled to notice of the date, time, and place of the hearing not later than 21 days before the date of the hearing. A request for a hearing must be made during the 30-day period following the date on which the applicant or the holder of a license received notice that the license was denied or that it was to be revoked or refused renewal.

(c) Except as provided in Subsection (e) of this section, revocation of a license or an order refusing to renew a license does not take effect until the expiration of 30 days following the date on which the holder of the license received notice of the revocation or order of refusal to renew the license.

(d) If after a hearing the license is denied, revoked, or not renewed, the commission shall send to the applicant or holder of the license a copy of their findings and grounds for decision.

(e) The commission may revoke a license to be immediately effective in a situation where health or safety requires action. The commission must immediately notify the holder and provide an opportunity for a hearing within 14 days after the action takes effect.

(f) The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) applies to all hearings authorized by this Act.

Injunctions

Sec. 9. (a) The commission may petition a district court to restrain a person who falsely represents a health care facility as licensed under this Act. A suit for injunctive relief must be brought in Travis County.

(b) On application for injunctive relief and a finding that a person is falsely representing a health care facility as licensed under this Act, the district court shall grant the injunctive relief the facts may warrant.

(c) At the request of the commission, the attorney general shall institute and conduct the suit authorized in Subsection (a) of this section in the name of the State of Texas.

Disposition of Funds

Sec. 10. All fees collected under this Act shall be deposited with the state treasury to the credit of the commission, and said license fees are hereby appropriated to the commission for its use in the administration and enforcement of this Act.

Personnel

Sec. 11. The commission shall carry out the licensing provided by this Act without employing additional personnel or requiring additional funds for the fiscal years ending August 31, 1978, and August 31, 1979.

[Acts 1977, 65th Leg., p. 1383, ch. 553, §§ 1 to 11, eff. Sept. 1, 1977.]

Section 12 of the 1977 Act provided: "This Act takes effect September 1, 1977, except for Section 2, which takes effect September 1, 1978."

Art. 5561f. Interstate Compact on Mental Health

*[See Compact Edition, Volume 5 for text of 1
and 2]*

Sec. 2a. The office of Interstate Compact on Mental Health Administrator for Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abol-

ished, and this Act expires effective September 1, 1985.

¹ Article 5429k.

*[See Compact Edition, Volume 4 for text of 3
to 6]*

[Amended by Acts 1977, 65th Leg., p. 1847, ch. 735, § 2.107, eff. Aug. 29, 1977.]

TITLE 93

MARKETS AND WAREHOUSES

CHAPTER TWO. WAREHOUSES AND WAREHOUSEMEN

Art. 5577b. Grain Warehouse Act

[See Compact Edition, Volume 5 for text of 1]

Definitions

Sec. 2. For the purpose of this Act:

[See Compact Edition, Volume 5 for text of 2(a) to (c)]

(d) "Public grain warehouse," hereinafter referred to as warehouse, means any enterprise operating a building, bin, or similar structure used for receiving, storage, shipment or handling of grain for hire, or for purchase and sale of grain, or of grain on which payment is deferred. Providing, however, that nothing herein shall bring within the definition of public grain warehouse, any person, firm, or corporation whose entire business is manufacturing of or sale at retail of manufactured grain. A business involved in grain manufacturing or the retail sale of manufactured grain is not exempt from licensing if it satisfies the definition of a "public grain warehouse." Further, providing that any person, firm, or corporation which receives grain, with the intent of ultimately using such grain for planting seeds or for feeding livestock on the premises where it is received, shall not be within the definition of a public grain warehouse in this Act, unless such person, firm, or corporation, in writing, requests of the Commissioner of Agriculture to be licensed as a public grain warehouse.

[See Compact Edition, Volume 5 for text of 2(e) to (j)]

(k) "Received grain" is grain that is stored in a licensed public grain warehouse and for which a Texas Grain Warehouse Receipt has been issued and has not been cancelled.

(l) "Open storage grain" is grain that is received for storage by a licensed public grain warehouse on which no negotiable grain warehouse receipt is outstanding and which is not owned by the warehouse in which it is stored.

(m) "Company owned grain" is grain that has either been paid for and is wholly owned by the licensed warehouse or grain on which the licensed

warehouse has a written contract to purchase from the owner under which ownership of the grain has been conveyed to the warehouse.

[See Compact Edition, Volume 5 for text of 3 to 6]

Bond Requisites

Sec. 7.

[See Compact Edition, Volume 5 for text of 7(a)]

(b) Such bond shall: (1) be in such form and contain such terms and conditions as the commissioner shall prescribe; (2) be conditioned upon the faithful performance of all obligations of a licensed warehouseman as to receipted grain and open storage grain under the terms of this Act and regulations hereunder from the effective date of the bond until the license is revoked or the bond is cancelled as provided in this Act, whichever occurs first; and (3) be further conditioned upon the faithful performance from the effective date of the bond and thereafter, whether or not said warehouse remains licensed under this Act, of such obligations as a warehouseman under contract with depositors of grain in the warehouse as exists on the effective date of the bond or are thereafter assumed prior to the time the license of the warehouseman is revoked or the bond is cancelled as provided herein, whichever occurs first; and (4) in an amount of bond to be that the net worth of the company shall be the equivalent of 20¢ per bushel of the storage capacity, and the bond shall be not less than 20¢ per bushel on the first million bushels; 15¢ per bushel on the second million bushels; 10¢ per bushel on all capacity above two million bushels, the bond not to be less than \$15,000.00 nor more than \$500,000.00. In the event the net worth of the company is less than 20¢ per bushel based on storage capacity, then a deficiency bond shall be established for the difference in addition to the above mentioned bond and without regard to the maximum amount. Continuance certificates or renewal certificates shall be acceptable for reissuance of warehouse license.

(c) The applicant may give a single bond meeting the requirements of this Act and all licensed warehouses operating by him shall be deemed as one warehouse for the purpose of this bond, except that

each licensed facility must be covered by a bond in the amount of at least \$15,000.00.

[See Compact Edition, Volume 5 for text of 7(d)]

[See Compact Edition, Volume 5 for text of 8 to 14]

Duty of Warehouseman to Receive: Issuance of Tickets and Receipts

Sec. 15. (a) Every licensed warehouseman shall, upon receiving grain, issue to the person from whom the grain was received, a serially numbered ticket in a form approved by the commissioner. Such tickets shall be nonnegotiable. No two nonnegotiable tickets bearing the same number may be issued by the same warehouse during any one calendar year.

(b) Upon application of the depositor, the warehouseman shall issue to the depositor a Texas Grain Warehouse Receipt in a form prescribed by the commissioner and in conformity with Chapter 7, Texas Business & Commerce Code. Warehouse receipts issued under this chapter shall be subject to all the provisions of Chapter 7, Texas Business & Commerce Code.¹ Texas Grain Warehouse Receipts are negotiable documents of title.

[See Compact Edition, Volume 3 for text of 15(c)]

¹ Business and Commerce Code, § 7.101 et seq.

[See Compact Edition, Volume 3 for text of 16 to 19]

Records

Sec. 20.

[See Compact Edition, Volume 5 for text of 20(a) to (c)]

(d) The warehouseman shall keep in numerical order his copies of the tickets issued by him.

(e) A licensed grain warehouse facility shall report to the commissioner, on forms furnished by him, the following information on nonnegotiable scale weight tickets used:

- (1) the number of tickets printed;
- (2) the serial numbers of the above tickets; and
- (3) the printer of the scale weight tickets.

[See Compact Edition, Volume 5 for text of 21 to 24]

Penalties

Sec. 25. (a) Unless otherwise provided in this Act, every person who shall violate any of the provisions of this Act shall be guilty of a Class B misdemeanor.

(b) Any person who shall transact any public warehouse business without first procuring a license as herein provided, or who shall continue to transact any such business after such license has been re-

voked or suspended except as provided in Section 15, shall be guilty of a felony of the third degree for each day such business is carried on.

(c) Every person who issues or aids in issuing a receipt or ticket knowing that the grain for which such receipt or ticket is issued has not been actually received at the licensed warehouse, every person who issues or aids in issuing a duplicate, or additional negotiable receipt for grain knowing that a former negotiable receipt for the same grain or any part thereof is outstanding and uncanceled, except in case of a lost, stolen, or destroyed receipt, as provided in Section 20, and every person who shall fraudulently and without proper authority represent, forge, alter, counterfeit or simulate any license, ticket, or receipt provided for in this Act, shall be guilty of a felony of the second degree.

(d) Except in case of sale or other disposition of the grain in lawful enforcement of the warehouseman's lien or on warehouseman's lawful termination of storage, shipping or handling agreements, or except as permitted by regulations of the commissioner when necessary to effectuate the purpose of this Act:

(1) Every person who delivers any grain out of the warehouse for which a license has been issued, knowing that a negotiable receipt, the negotiation of which would transfer the right of possession of such grain is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery shall be guilty of a felony of the second degree.

(2) Any person who delivers any commodity out of warehouse for which a license has been issued, knowing that a nonnegotiable receipt or ticket is outstanding and uncanceled, without the prior approval of the person lawfully entitled to delivery under such nonnegotiable receipt or ticket and without such delivery being shown on the appropriate records of the warehouseman, shall be guilty of a felony of the second degree.

(e) Every person who fraudulently issues or aids in fraudulently issuing a receipt or ticket knowing that it contains any false statement shall be guilty of a felony of the second degree.

(f) Every person who deposits grain to which he has not title, or upon which there is a lien or mortgage, and who takes for such grain a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, and every person who changes any receipt or ticket subsequent to issuance except for notations by the warehouseman or partial delivery, shall be guilty of a felony of the second degree.

(g) Every person who, with the intent to deprive the owner of the grain, obtains or exercises control over grain stored in a licensed grain warehouse without the owner's effective consent, or who obtains from another grain stolen from a licensed grain warehouse or exercises control over that grain stolen by another knowing it was stolen, shall be guilty of a felony of the second degree.

(h) Venue for prosecutions under this Act is in the county in which the alleged offense occurred.

[See Compact Edition, Volume 5 for text of 26 to 29]

[Amended by Acts 1977, 65th Leg., p. 177, ch. 87, §§ 1 to 6, eff. June 1, 1977.]

Section 7 of the 1977 amendatory act provided: "This Act shall take effect on June 1, 1977."

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 (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. 5781. Adjutant General

Department

Sec. 1.

[See Compact Edition, Volume 5 for text of 1(a) and (b)]

(c) The Adjutant General's Department is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the Department is abolished, and this Article expires effective September 1, 1981.

[See Compact Edition, Volume 5 for text of 2 to 15]

¹ Article 5429k.

[Amended by Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.055, eff. Aug. 29, 1977.]

Art. 5787. Veterans County Service Office

[See Compact Edition, Volume 5 for text of 1 and 2]

Veterans Affairs Commission

Sec. 3.

[See Compact Edition, Volume 3 for text of 3(a) and (b)]

(b-1) The Veterans Affairs Commission of the State of Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1981.

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

[Amended by Acts 1977, 65th Leg., p. 1839, ch. 735, § 2.051, eff. Aug. 29, 1977.]

¹ Article 5429k.

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 Sec-

tion 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 investi-

gation 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 be-

fore 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 improvidently 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 without 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, 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 before 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 Sedition

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 pilage;

(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, includ-

ing 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 administration 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.]

CHAPTER FOUR A. TEXAS NAVY

Art. 5891.1. Texas Navy, Incorporated

[See Compact Edition, Volume 5 for text of 1 and 2]

Application of Sunset Act

Sec. 2a. The Texas Navy, Incorporated, is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the Texas Navy, Incorporated, is abolished, and this Act expires effective September 1, 1979.

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 3 to 5]

[Amended by Acts 1977, 65th Leg., p. 1832, ch. 735, § 2.004, eff. Aug. 29, 1977.]

TITLE 95

MINES AND MINING

3. INTERSTATE MINING COMPACT

Article

- 5920-1. Repealed.
5920-1a. Application of Sunset Act [NEW].
5920-2. Repealed.
5920-3. Repealed.
5920-4. Repealed.

4. SURFACE MINING [REPEALED].

- 5920-10. Repealed.

3. INTERSTATE MINING COMPACT

Art. 5920-1. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(5), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

The repealed article, constituting the Interstate Mining Compact, was derived from Acts 1975, 64th Leg., p. 324, ch. 136, § 1.

Art. 5920-1a. Application of Sunset Act

The office of Interstate Mining Compact Commissioner for Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1983.

[Added by Acts 1977, 65th Leg., p. 1841, ch. 735, § 2.063, eff. Aug. 29, 1977.]

¹ Article 5429k.

Arts. 5920-2 to 5920-4. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(5), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

The repealed articles, establishing the Mining Council, were derived from Acts 1975, 64th Leg., p. 329, ch. 136, §§ 2 to 4.

4. SURFACE MINING [REPEALED]

Art. 5920-10. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(5), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

The repealed article, the Surface Mining and Reclamation Act, was derived from Acts 1975, 64th Leg., p. 2110, ch. 690.

Without reference to repeal of this article, it was amended by Acts 1977, 65th Leg., p. 1320, ch. 524, §§ 1 to 8, as set out below:

Section 1 of the 1977 Act amended subs. (2) and (5) of § 4 to read:

"(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, those aspects of underground mining having significant effects on the surface and in situ gasification of coal and lignite; provided, however, nothing herein shall be construed to include in situ mining activities associated with the removal of uranium or uranium ore."

"(5) 'Surface mining operation' means those activities conducted at or near the mining site and concomitant with the surface mining including extraction, storage, processing, and shipping of minerals and reclamation of the land affected."

Section 2 of the Act amended §§ 7, 17, and 18 of this article to read:

"Rules and Regulations

"Sec. 7. (a) 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.

"(b) 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."

"Application of the Administrative Procedure and Texas Register Act

"Sec. 17. The commission shall comply with the Administrative Procedure and Texas Register Act in all proceedings under this Act except where inconsistent with this Act."

"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 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.

"(c) 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.

"(d) The court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings.

"(e) 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.

"(f) Any action arising under this Act shall be given precedence by the court over cases of a different nature."

Section 3 of the Act amended subs. (a) and (d) of § 8 to read:

"(a) 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 before September 20, 1976, 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."

"(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 permit area, which may be paid in annual installments apportioned over the term of the permit."

Section 4 of the Act amended subsec. (a) of § 12 to read:

"(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 permit to be revoked or 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."

Section 5 of the Act amended subsec. (d) of § 13 to read:

"(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 allegations. In the event that all the petitioners and the applicant stipulate agreement prior to the requested hearing, such hearing need not be held."

Section 6 of the Act amended subsec. (b) of § 15 to read:

"(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 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."

Section 7 of the Act amended § 5 to read:

Exclusions and Exemptions

"Sec. 5. (a) 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 the Act.

"(b) In situ mining operations permitted by the Texas Water Quality Board prior to January 1, 1978, shall not require a permit pursuant to this Act until such time as the Texas Water Quality Board issued permit expires or is revised in accordance with this Act. On January 1, 1978, the permits issued pursuant to the authority of the Texas Water Quality Board shall be transferred to the commission and administered by the commission."

Section 8 of the Act repealed subsec. (d) of § 16, which prior thereto read:

"(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."

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)]

(1) 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)]

(n) A "trust company" is a bank or trust company authorized to exercise trust powers in this State.

[See Compact Edition, Volume 5 for text of 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; provided that a trust company in its capacity as custodian may acquire as custodial property interests in one or more common trust funds established and maintained by the trust company pursuant to Section 1 of the Uniform Common Trust Fund Act, as amended (Article 7425b-48, Vernon's Texas Civil Statutes). 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; Acts 1977, 65th Leg., p. 627, ch. 232, §§ 1, 2, eff. Aug. 29, 1977.]

TITLE 97

NAME

CHAPTER ONE. ASSUMED NAME [REPEALED]

Arts. 5924 to 5927b. Repealed by Acts 1977, 65th
Leg., p. 1101, ch. 403, § 2, eff. Aug. 29, 1977.

DISPOSITION TABLE

Showing where the provisions of repealed arts. 5924 to 5927b can be found in Chapter 36 of the Business and Commerce Code, the Assumed Business or Professional Name Act.

Former Article	New Section	Former Article	New Section
5924 -----	36.10	5926 -----	36.15
5924.1 -----	36.10	5927 -----	---
5924(a) -----	36.13	5927a -----	---
5925 -----	36.12	5927b -----	36.26
5925a -----	36.12		

TITLE 97A

NATIONAL GUARD ARMORY BOARD

Article

5931-1a. Application of Sunset Act [NEW].

Art. 5931-1a. Application of Sunset Act

The Texas National Guard Armory Board is subject to the Texas Sunset Act;¹ and unless continued

in existence as provided by that Act the Board is abolished, and this Title expires effective September 1, 1981.

[Added by Acts 1977, 65th Leg., p. 1839, ch. 735, § 2.054, eff. Aug. 29, 1977.]

¹ Article 5429k.

Title 99

NOTARIES PUBLIC

Art. 5949. Notary Public

Appointment; Number and Terms; Jurisdiction

1. (a) The Secretary of State of the State of Texas shall appoint a convenient number of Notaries Public in 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. The jurisdiction of each Notary Public appointed or reappointed after the effective date of this Act shall be coextensive with the boundaries of the state, irrespective of the county in which he is appointed.

(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, 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 in 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 in only one county in this state at the same time; 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. 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 in 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 in 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]

Notice to Secretary of State; Issuance of Commission; Rejection of Application; Appeal

5. Immediately after the qualification of any Notary Public, the county clerk shall forthwith notify the Secretary of State that such person has qualified and the date of such qualification, and shall remit with such notice the fee due the Secretary of State, whereupon, the Secretary of State shall cause a commission to be issued to such Notary Public, which commission shall be effective as of the date of qualification. All such commissions shall be for-

warded to the proper county clerk for delivery to such persons entitled to receive them. Nothing herein shall prevent any qualified Notary Public from performing the duties of his office from and after his qualification and before the receipt of his commission.

The Secretary of State may, for good cause, reject any application, or revoke the commission of any Notary Public, but such action shall be taken subject to the right of notice, hearing and adjudication, and the right of appeal therefrom. Such appeal shall be made to the District Court of Travis County, Texas, but upon such appeal the Secretary of State shall have the burden of proof and such trial shall be conducted de novo.

"Good cause" shall include final conviction for a crime involving moral turpitude, any false statement knowingly made in an application, and final conviction for the violation of any law concerning the regulation of the conduct of Notaries Public in this state, or any other state.

Reappointment; Change of Address; Vacation of Office

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.

(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 in which he has been appointed of any change of his address within ten (10) days after the change.

(d) If a Notary Public removes his residence from this state, his office is automatically vacated. If he removes his residence or his principal place of business or employment to another county in this state, so that he maintains neither his residence nor his principal place of business or employment in the county in which he was appointed, his office is automatically vacated, and if he desires to continue to act as a Notary Public, he must surrender his commission to the Secretary of State and make

application for appointment in such other county in the same manner as for an initial appointment.

Bond

7. Any person appointed or reappointed a Notary Public after the effective date of this Act, before entering upon his official duties, shall execute a bond in the sum of Two Thousand Five Hundred (\$2,500.00) Dollars with two or more solvent individuals, or one solvent surety company authorized to do business in this State, as surety, such bond to be approved by the county clerk of his county, payable to the Governor, and conditioned for the faithful performance of the duties of his office; and shall also take and subscribe his name and social security number to the official oath of office which shall be endorsed on said bond with the certificate of the official administering the same. Said bond shall be deposited in the office of the county clerk and shall not be void on the first recovery, and may be sued on in the name of the party injured from time to time until the whole amount thereof has been recovered. Any such person shall be deemed to be qualified when he has taken the official oath of office, furnished the bond and paid the fees herein provided for, all within the time allowed therefor. All Notaries Public who have been appointed, and who have qualified prior to the effective date of this Act, will not be required to increase their bond until they are reappointed.

[See Compact Edition, Volume 5 for text of 8 to 10]

[Amended by Acts 1975, 64th Leg., p. 1024, ch. 392, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 373, ch. 185, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 amendatory act amended art. 5958; § 3 amended art. 5960; § 4 thereof provided: "This Act shall become effective on August 29, 1977."

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.]

Art. 5958. Office to Become Vacant

Whenever any notary public shall remove permanently from the county in which he was appointed, or an ex officio notary public from his precinct, his office shall thereupon be deemed vacant.

[Amended by Acts 1977, 65th Leg., p. 375, ch. 185, § 2, eff. Aug. 29, 1977.]

Art. 5960. Seal

Each notary public shall provide a seal of office, whereon shall be engraved in the center a star of five points, and the words, "Notary Public, County of _____, Texas," around the margin (the blank

to be filled with the name of the county in which the officer is appointed), and he shall authenticate all his official acts therewith.
[Amended by Acts 1977, 65th Leg., p. 376, ch. 185, § 3, eff. Aug. 29, 1977.]

TITLE 100

OFFICERS—REMOVAL OF

Art. 5963. Trial by Senate

(a) All persons against whom articles of impeachment are preferred by the House of Representatives shall be tried by the Senate sitting as a court of impeachment in the manner provided by Article XV of the Constitution of Texas.

(b) If the Senate is in session, at a regular or called session of the Legislature when articles of impeachment are preferred by the House, it shall receive the articles when presented and, on a day and time to be set by the Senate, shall resolve into a court of impeachment to consider the articles. The Senate may continue in session as a court of impeachment beyond any date of expiration of the session for legislative purposes or may adjourn as a court of impeachment to a day and time set by the Senate.

(c) If the Senate is not in session at a regular or called session of the Legislature when articles of impeachment are preferred by the House, the House shall cause a certified copy of the articles of impeachment to be delivered, by personal messenger or registered or certified mail, to the Governor, the Lieutenant Governor, and each member of the Senate. A record of the deliveries and a copy thereof shall be delivered to the Lieutenant Governor and the President Pro Tempore of the Senate. Thereupon the Senate shall be convened for the purpose of considering such articles of impeachment in the following manner:

1. By proclamation of the Governor; or if the Governor fails to issue such proclamation within ten days after the day the articles of impeachment are preferred by the House, then

2. By proclamation of the Lieutenant Governor; or if the Lieutenant Governor fails to issue such proclamation within fifteen days from the day the articles of impeachment are preferred by the House, then

3. By proclamation of the President Pro Tempore of the Senate; or, if the President Pro Tempore of the Senate fails to issue such proclamation within twenty days from the day the articles of impeachment are preferred by the House, then

4. By proclamation in writing signed by a majority of the members of the Senate.

(d) The proclamation convening the Senate shall be in writing, shall state the purposes for which the Senate is to be convened and shall fix the date for the convening thereof, which may not be later than twenty days from the issuance of the proclamation. The proclamation shall be published in at least three daily newspapers of general circulation, and a copy of the proclamation shall be sent by registered or certified mail to each member of the Senate and the Lieutenant Governor. On the day set for the convening of the Senate, the Senate shall convene, shall receive the articles of impeachment when presented, and shall resolve into a court of impeachment for purposes of considering the articles of impeachment.

(e) Once the Senate resolves into a court of impeachment, it shall adopt rules of procedure and shall proceed to consider the articles of impeachment. It may from time to time recess or adjourn to a day and time to be set by the Senate. The Senate may designate the day and time of reconvening in relation to the occurrence of one or more events specified in the motion and may make the reconvening contingent on the occurrence of those events. At all times the Senate is scheduled to be in session as a court of impeachment it is the duty of each member of the Senate to be in attendance. The Senate may compel the attendance of any absent Senator. Two-thirds of the members of the Senate constitute a quorum, but a smaller number may adjourn from day to day and compel the attendance of absent members.

(f) The Senate shall have and exercise the power to send for persons, papers, records, books, and other documents, to compel the giving of testimony, to punish for contempt to the same extent as the district courts, and to meet in closed sessions for purposes of deliberation, and all other powers necessary to carry out its duties under Article XV of the Texas Constitution. The Senate may employ such aid and assistance as it deems necessary to enforce, execute, and carry into effect the lawful orders, mandates, writs, process, and precepts of the Senate sitting as a court of impeachment and may empower its officers, committees, or agents to exercise such powers as the Senate may prescribe.

(g) When convened as a court of impeachment, the members of the Senate and the Lieutenant Gov-

ernor shall receive the same mileage and per diem as is provided for members of the Legislature; the same with all expenses incident to the impeachment trial shall be paid from appropriations made for the contingent expenses of the Legislature or for the mileage and per diem of members. However, if the Senate is not in session as a court of impeachment for more than four consecutive days as a result of recess or adjournment, the members of the Senate and the Lieutenant Governor are not entitled to the per diem for those days.

[Amended by Acts 1977, 65th Leg., p. 84, ch. 41, § 1, eff. Aug. 29, 1977.]

Art. 5966a. State Commission on Judicial Conduct

“Commission”, “Master”, and “Judge”

Sec. 1. As used in this chapter, “commission” means the State Commission on Judicial Conduct provided for in Section 1-a of Article V of the Constitution, “master” means a special master appointed by the Supreme Court pursuant to said Section 1-a, and, unless the context otherwise requires, “judge” means a justice or judge who is the subject of an investigation or proceeding under said Section 1-a. All constitutional and statutory references to the State Judicial Qualifications Commission shall be construed to mean the State Commission on Judicial Conduct.

Application of Sunset Act

Sec. 1A. The State Judicial Qualifications Commission is subject to the Texas Sunset Act,¹ but it is not abolished under that Act. The commission shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1987 and of every 12th year after 1987 are reviewed.

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 2 and 3]

Cooperation With and Assistance and Information to Commission

Sec. 4. State and local public bodies and departments, officers and employees thereof, and officials and attaches of the courts of this state shall cooperate with and give reasonable assistance and information to the commission and any authorized representative thereof, or to a master, in connection with any investigations or proceedings within the jurisdiction of the commission, or a master, including contempt proceedings by a master.

[See Compact Edition, Volume 5 for text of 5 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 prop-

er 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]

Petition for Order Compelling Person to Attend or Testify or Produce Writings or Things: Service of Order to Appear Before Court: Order to Appear Before Commission or Master: Contempt

Sec. 8. If any person other than the judge refuses to attend or testify or produce any writings or things required by any such subpoena, the commission or the master may petition any district court for an order, or the master may issue an order, compelling such person to attend and testify or produce the writings or things required by the subpoena before the commission or the master. The court or the master shall order such person to appear before it at a specified time and place and then and there show cause why he has not attended or testified or produced the writings or things as required. A copy of the order shall be served upon him. If it appears to the court or the master that the subpoena was regularly issued, the court or the master shall order such person to appear before the commission or the master at the time and place fixed in the order and testify or produce the required writings or things. Upon failure to obey the order, such person shall be dealt with as for contempt of court.

Depositions: Petition for Order Requiring Person to Appear and Testify Before Designated Officer: Subpoena

Sec. 9. In any pending investigation or formal proceeding, the commission or the master may order the deposition of a person residing within or without the State to be taken in such form and subject to such limitations as may be prescribed in the order. If the judge and counsel for the commission do not stipulate as to the manner of taking the deposition, either the judge or counsel may file in any district court a petition entitled “In the Matter of Proceeding of State Commission on Judicial Conduct No. ____ (state number),” and stating generally, without identifying the judge, the nature of the pending matter, the name and residence of the person whose testimony is desired, and, directions, if any, of the commission or master, asking that an order be made requiring such person to appear and testify before a designated officer. Upon the filing of the petition, the court may make an order requiring such person to appear and testify. A subpoena for such deposition shall be issued by the clerk and the deposition shall be taken and returned, in the manner prescribed by law for depositions in civil actions. If the deposition is that of a person residing or present within this

state, the petition shall be filed in the district court of the county in which such person resides or is present, otherwise in the district court of any county in which the commission maintains an office. Upon the failure to obey such subpoena or any order issued in connection therewith, such a person shall be dealt with as for contempt of court.

Fees and Mileage of Witnesses

Sec. 10. Each witness, other than an officer or employee of the state or a political subdivision or an officer or employee of a court of this state, shall receive for his attendance the same mileage and per diem as is allowed witnesses before any grand jury in the state. The amounts shall be paid by the commission from funds appropriated for the use of the commission.

[See Compact Edition, Volume 5 for text of 11]

Compensation of Active or Retired Judge or Justice as Master

Sec. 12. Any active district judge or justice of the court of civil appeals appointed to act as master under said Section 1—a shall, in addition to and cumulative of all other compensation and expenses authorized by law, receive, while in the performance of their duties as master, a per diem of \$25 for each day, or fraction thereof, spent in the performance of their duties as such master. Any retired judge or justice of a district court, a court of civil appeals, the Court of Criminal Appeals, or the Supreme Court appointed to act as such master shall receive while in the performance of their duties as such master a per diem of \$25 for each day or fraction thereof spent in the performance of their duties as master and in addition an amount representing the difference between all of the retirement benefits of such judge or justice as a retired judge or justice and the salary

and compensation received from the state by active judges or justices of the district courts, courts of civil appeals, the Court of Criminal Appeals, or the Supreme Court as the case might be. Such retirement allowances shall continue to be paid by and from the same source as in the instance of a retired judge who had not been assigned duties. Payments of the additional amounts provided for by this section shall be upon certificates of approval by the commission.

[See Compact Edition, Volume 5 for text of 13]

Immunity

Sec. 14. Any person other than the judge who refuses to testify, give testimony or produce documents or things in any proceeding or deposition in connection with any proceeding before the commission or a master upon the ground that his testifying, his testimony or the production of such document or thing may tend to incriminate him, may nevertheless be required to testify and to produce such document or thing, but when so required under the provisions of Section 8 hereof over his proper claim of privilege against self-incrimination or his right not to testify, such person shall not be subject to indictment or prosecution for any transaction, matter or thing concerning which he truthfully testified or produced evidence, documentary or otherwise. A master has the same powers as a district judge in matters of contempt and granting immunity.

[See Compact Edition, Volume 5 for text of 15 and 16]

[Amended by Acts 1975, 64th Leg., p. 1380, ch. 529, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1118, ch. 416, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1850, ch. 735, § 2.132, eff. Aug. 29, 1977.]

TITLE 102

OIL AND GAS

GENERAL PROVISIONS

Repeal

This Title 102, with certain enumerated exceptions, was repealed by art. 1, § 2(a)(2) of Acts 1977, 65th Leg., p. 2689, ch. 871, enacting the Natural Resources Code, effective September 1, 1977.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Arts. 6004 to 6006. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Arts. 6008 to 6008c. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 6008 was amended by Acts 1977, 65th Leg., p. 1822, ch. 731, § 1.

Without reference to repeal of art. 6008-1, Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.062, added § 5a thereto to read:

"The office of Interstate Oil Compact Commissioner for Texas is subject to the Texas Sunset Act [art. 5429k]; and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1983."

Art. 6010. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Arts. 6012 to 6016. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Arts. 6018 to 6029a. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, arts. 6018 and 6019 were amended by Acts 1977, 65th Leg., pp. 189, 191, ch. 95, §§ 1 and 2.

Prior to repeal, art. 6020a was amended by Acts 1975, 64th Leg., p. 2216, ch. 705, §§ 9 and 10.

Prior to repeal, arts. 6022 and 6023 were amended by Acts 1977, 65th Leg., pp. 191, 192, ch. 95, §§ 3 and 4.

Arts. 6030 to 6032. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 6032a. Collection and Report of Tax

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 6032b to 6032c-1. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 6032d. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(5), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Arts. 6032e to 6036a. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 6036c. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Arts. 6038 to 6049g. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

NATURAL GAS

Art. 6050. Classification

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6051. May Enjoin Gas Pipe Line

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6052. Utility Office

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6053. Regulation of Utilities

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6053-1. Transportation of Gas and Gas Pipeline Facilities; Safety Standards

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6054. Orders, etc., Reviewed

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6055. To Refund Excess Charges

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6056. Operator's Reports

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6057. Discrimination

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6057a. Discrimination

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6057b. Penalty for Violation of Law

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6058. Appeal From City Control

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6059. Appeal From Orders

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6060. Utility Tax

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6061. Report to Governor

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6062. Penalties**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6063. Receiver**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6064. Duties of Pipe Line Expert**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6065. Employees of Commission**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6066. Expenditures**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6066a. Regulation of Transportation of Oil or Oil Products Thereof**Saved from Repeal**

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 6066b to 6066d. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 6066d was amended by Acts 1977, 65th Leg., p. 1333, ch. 531, § 1.

Art. 6066e. Underground Natural Gas Storage and Conservation Act of 1977**Short Title**

Sec. 1. This Act may be referred to as the Underground Natural Gas Storage and Conservation Act of 1977.

Declaration of Policy

Sec. 2. The underground storage of natural gas promotes the conservation of natural gas, permits the building of reserves for orderly withdrawal in periods of peak demand, makes more readily available natural gas resources to residential, commercial, and industrial customers of this state, provides a better year-round market to the various gas fields, and promotes the public interest and welfare of this state.

Definitions

Sec. 3. In this Act:

(a) "Person" means any natural person, partnership or other combination of natural persons, corporation, group of corporations, trust, or governmental entity.

(b) "Gas utility" means a gas utility as defined in Section 3, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), or Article 6050, Revised Civil Statutes of Texas, 1925, as amended.

(c) "Natural gas" means any gaseous material composed predominantly of the following hydrocarbons or mixtures thereof: methane, ethane, propane, butane (normal or isobutane), in either its original or manufactured state, or gas which has been processed to separate it into one or more of its component parts after its withdrawal from the earth.

(d) "Native gas" means (1) natural gas which has not previously been withdrawn from the earth, or (2) natural gas which has been withdrawn from the storage facility, processed, and reinjected into the storage facility.

(e) "Storage facility" means any subsurface sand, stratum, or formation used or to be used for the underground storage of natural gas and all surface and subsurface rights and appurtenances necessary to the operation of a facility for the underground storage of natural gas.

(f) "Storer" means (1) a gas utility, (2) a wholly owned subsidiary of a gas utility, (3) the parent corporation of a gas utility, or (4) a wholly owned subsidiary of a parent corporation which also wholly owns a subsidiary gas utility. A nonutility storer included in Category (2), (3), or (4) above must operate the storage facility pursuant to a contract with its affiliated gas utility that provides that all withdrawals of natural gas from the storage facility must be delivered to the affiliated gas utility.

(g) "Substantially depleted" means that at least 75 percent of the estimated volume of recoverable native gas reserves originally in place in any gas-bearing sand, formation, or stratum have been withdrawn from the sand, formation, or stratum.

(h) "Interested person" means any person who enters an appearance at the commission hearing required by Section 4 of this Act.

(i) "Commission" means the Railroad Commission of Texas.

Findings of Commission

Sec. 4. (a) Any storer desiring to exercise the right of eminent domain for the acquisition of a storage facility shall, as a condition precedent to the filing of its petition in the appropriate court, obtain from the commission an order finding:

(1) that the underground formation or stratum sought to be acquired is classified by the commission as a gas reservoir and is suitable for the underground storage of natural gas and that the storage of natural gas is necessary for the gas utility to provide adequate service to the public and is in the public interest;

(2) that the use of the formation or stratum as a storage facility will cause no injury to surface or underground water resources;

(3) that the formation or stratum does not contain native gas producible in paying quantities unless the recoverable volumes of native gas originally in place are substantially depleted and unless the formation or stratum has a greater value of ultimate use to the consuming public as a storage facility to ensure an adequate supply of natural gas or for the conservation of natural gas than the production of native gas which remains;

(4) the extent of the horizontal limits of the reservoir expected to be penetrated by displaced or injected gas; and

(5) that no portion of the formation or stratum sought to be acquired has been condemned or is being utilized for the injection, storage, and withdrawal of gas by others.

(b) The designation of a storage facility does not prevent any storer from instituting additional proceedings in the event it is later determined that the underground reservoir should be extended to prevent the escape, displacement, or withdrawal by others of injected gas.

Commission Jurisdiction

Sec. 5. The commission shall have jurisdiction to supervise the construction and operation of all storage facilities formed pursuant to this Act, and in addition to the findings required by Section 4 of this Act, the commission shall include in any order of approval a requirement that the storer file a report each month, including each month prior to the time the storage facility is in operation, with the commission showing, for that month, the volume of gas injected and stored gas withdrawn from storage.

Withdrawal of Native Gas

Sec. 6. A storer may withdraw from storage injected and stored gas as market demand dictates.

However, anytime a storer's withdrawals from a storage facility equal the volume of gas injected for storage the storer shall not withdraw additional gas from the storage facility without first obtaining specific authority from the commission.

Storage Operations Must be Bona Fide

Sec. 7. A storer must initiate injection operations for gas storage within 12 months after the condemnation order of the court becomes final and storage operations must continue with reasonable diligence thereafter. Should the monthly reports to the commission indicate that bona fide underground gas storage operations are not being conducted, the commission may on its own motion or on motion of any interested person schedule a public hearing, giving the storer the opportunity to show cause why the commission approval of the project should not be withdrawn. If the commission finds that the storage project is not being conducted in a bona fide manner, it shall issue an order withdrawing approval of the storage facility, and all property, both mineral and surface, that was condemned by the storer shall revert to those who owned the property at the time of condemnation or their successors.

Relocation of Facilities

Sec. 8. In the event the acquisition or operation of a storage facility acquired through the exercise of the power of eminent domain requires the relocation or alteration of any railroad, electric, telegraph, telephone, or pipeline lines or facilities, the expense of the relocation or alteration shall be borne by the storer. The expense of relocation means the actual cost incurred in providing a comparable replacement line or facility, less net salvage value from the sale or other disposition of the old facility.

Appropriation of Storage Facilities; Limitations

Sec. 9. After an order of the commission is issued approving a storage facility, a storer may condemn without further attack as to its right to condemn any subsurface sand, stratum, or formation for the underground storage of natural gas, condemning all mineral and royalty rights as are reasonably necessary for the operation of the storage facility, subject to the limitations of this Act, and the storer may condemn any other interests in property that may be required, including interests in the surface estate in the sand, stratum, or formation reasonably necessary to the operation of the storage facility, provided that:

(1) no part of a reservoir is subject to condemnation unless the storer has acquired by option, lease, conveyance, or other negotiated means at least 66 $\frac{2}{3}$ percent of the ownership of minerals, including working interests, and 66 $\frac{2}{3}$ percent of the ownership of the royalty interests, computed in relation to the surface area

overlying the part of the reservoir which as found by the commission to be expected to be penetrated by displaced or injected gas;

(2) no dwelling, barn, store, or other building is subject to condemnation; and

(3) the right of condemnation is without prejudice to the rights of the owners or holders of other rights or interests of lands to drill through the storage facility under such terms and conditions as the commission may prescribe for the purpose of protecting the storage facility against pollution or escape of natural gas and is without prejudice to the rights of the owners or holders of other rights or interests of the lands to all other uses so long as those uses do not interfere with the operation of the storage facility.

Institution of Condemnation Proceedings

Sec. 10. (a) The finding by the commission that underground storage is in the public interest is binding on all persons that the storer has the right to condemn. After that finding of the commission, the storer has the right to condemn all of the underground storage area and any surface area required for the use and enjoyment of the storage facility.

(b) The storer shall initiate eminent domain proceedings in the court having jurisdiction wherein a portion of the land is situated. The petition shall set forth the purpose for which the property is sought to be acquired; a description of the sand, stratum, or formation and of the land under which it is alleged to be contained; the names of the owners thereof as shown by the deed records of the county; and a description of all other property and rights sought to be appropriated for use in connection with the storage facility, including any parts of the surface necessary for any facilities incidental to the operation of the storage facility. The petition shall state facts showing that the storer has obtained the findings of the commission required by Section 4 of this Act; that the storer in good faith has been unable to acquire the rights sought to be appropriated; that the storer has acquired, prior to the filing of the petition, by any means other than condemnation, at least 66⅔ percent of the ownership of the minerals, including working interests, and 66⅔ percent of the royalty interests of the property rights in the storage facility required for that purpose; and shall describe the surface area overlying the storage facility the storer seeks to acquire and the names of the owners of those rights and interests.

(c) Where more than one tract of land is involved, all or any tracts may be joined in one proceeding, without prejudice to the right of the storer to institute additional proceedings; provided, however, that the failure to make service upon a defendant does not affect the right of the storer to proceed against

any or all other of the defendants upon whom service has been made.

Exercise of Right of Eminent Domain

Sec. 11. All proceedings in connection with the condemnation and acquisition of storage facilities shall be in accordance with Articles 3264 through 3271, Revised Civil Statutes of Texas, 1925, as amended. To the extent of any conflict with this Act, the provisions of this Act prevail.

Ownership of Stored Gas

Sec. 12. All natural gas in the stratum condemned which is not native gas, and which is subsequently injected into storage facilities is personal property and is the property of the injector or its assigns, and in no event is such gas subject to the right of the owner of the surface of the lands or of any mineral or royalty owner's interest under which the storage facilities lie, or of any person other than the injector to produce, take, reduce to possession, waste, or otherwise interfere with or exercise any control over a storage facility. Upon failure, neglect, or refusal of such person to comply with this section, the storer has the right to compel compliance by injunction or by other appropriate relief by application to a court of competent jurisdiction.

Rights of Purchasers of Native Gas

Sec. 13. In the event there are remaining reserves of native gas in the storage facility which are dedicated to a purchaser and the purchaser and storer are unable to agree on an equitable settlement of rights with respect to the remaining native gas within a period of time that will prevent interference with the operation of the storage facility, the storer or purchaser may apply to the commission for an adjudication concerning remaining reserves of native gas. Upon such an application, the commission shall direct a settlement of remaining reserves of native gas that is equitable to all parties, but which does not interfere with the public benefits arising from the operation of the storage facility. In addition to any other disposition that is equitable to all parties, the commission may make a finding of the quantity of remaining recoverable native gas and an allocation of future production on a reasonable production schedule and order delivery to the purchaser by the storer of the amounts of native gas that the commission finds would have been taken by the purchaser during the term of the purchase agreement.

Abandonment

Sec. 14. When a storer has permanently abandoned the storage facility, the storer shall file with the commission a Notice of Abandonment, and shall

file an instrument in the deed records in the appropriate county or counties, stating that (1) the storage has ceased, and (2) all property, both mineral and surface, condemned by the storer has reverted to those who owned the property at the time of condemnation, or their heirs, successors, or assigns. The storer shall also file in the deed records in the appropriate county or counties a list of the owners of the mineral, royalty, and surface owners to whom the various interests have reverted, together with an affidavit that the storer has compiled the list from a current examination of title records and that the list is true and correct to the best of the knowledge of the affiant.

Applicability of Administrative Procedure and Texas Register Act

Sec. 15. The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas

Civil Statutes) is applicable to proceedings before the commission under this Act.

[Acts 1977, 65th Leg., p. 971, ch. 366, §§ 1 to 15, eff. Aug. 29, 1977.]

Art. 6066f. Natural Gas Supplies for Agricultural Purposes

Except to the extent that natural gas supplies are required to maintain natural gas service to residential users or hospitals and similar uses vital to public health and safety, no person, firm, corporation, partnership, association, or cooperative which sells natural gas for irrigation and also sells and distributes natural gas within the limits of any municipality or delivers gas to the boundary of any municipality for resale in the municipality shall curtail the supply of natural gas for agricultural purposes, including but not limited to irrigation pumping and crop drying. [Acts 1977, 65th Leg., p. 2133, ch. 851, § 1, eff. Aug. 29, 1977.]

TITLE 103

PARKS

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.

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.

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. 6078. Repealed by Acts 1977, 65th Leg., p. 2034, ch. 812, § 1, eff. June 16, 1977

Art. 6079b. Repealed by Acts 1977, 65th Leg., p. 2034, ch. 812, § 1, eff. June 16, 1977

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 105

PARTNERSHIPS AND JOINT STOCK COMPANIES

CHAPTER ONE. PARTNERSHIPS

LIMITED PARTNERSHIPS

Art. 6132a. Uniform Limited Partnership Act

[See Compact Edition, Volume 5 for text of 1 to 31]

Qualification of Foreign Limited Partnerships

Sec. 32. (a) Definition. "Foreign limited partnership" in this Act means a partnership formed under the limited partnership laws of any territory, possession, commonwealth, or state of the United States other than this state, having as members one or more general partners and one or more limited partners.

(b) Qualification. A foreign limited partnership may qualify to transact business in Texas by

(1) filing with the Secretary of State a copy of its certificate of limited partnership (or equivalent document) and all amendments thereto, with an original certification by the proper filing officer of the jurisdiction of its formation;

(2) filing with the Secretary of State a qualification statement containing:

(A) the name of the limited partnership, the jurisdiction of its formation, and the address of its principal place of business;

(B) the name and address of at least one of its general partners, who gives consent under Paragraph (C);

(C) a consent by the limited partnership and the named general partner(s) to be served with process in Texas through their registered agent in any proceeding for the enforcement of an obligation of the limited partnership;

(D) the address of the limited partnership's registered office in Texas;

(E) the name of the registered agent (either an individual or a corporation having as one of its purposes acting as a registered agent) for the limited partnership and for the named general partner(s) in Texas at such address; and

(F) the signature of the limited partnership and of the named general partner(s);

(3) paying a filing fee of one-half of one percent of the total contributions (including agreed additional contributions) of the limited partners stated in the copy of the certificate of limited partnership so filed, but not less than \$100 nor more than \$2500.

(c) Effect of Qualification. On qualifying under Section 32(b) of this Act, a foreign limited partnership shall enjoy the same rights and privileges, and shall be subject to the same duties, restrictions, and liabilities, as a limited partnership formed under this Act, but its internal affairs and the liabilities of its limited partners shall be governed by the laws of the jurisdiction of its formation. In no case shall a change in the laws of the jurisdiction of formation of a foreign limited partnership act to increase the liability of any resident limited partner.

(d) Amendments of Certificate. A qualified foreign limited partnership must amend its filings in Texas to reflect changes in its certificate of limited partnership (or equivalent document) by filing with the Secretary of State within a reasonable time after such changes have been effected a copy of the amendment with an original certification by the proper filing officer of the jurisdiction of its formation, and paying the following fees:

(1) for filing an amendment which does not provide for new, increased, or additional contributions, \$100 and

(2) for filing an amendment which provides for new, increased, or additional contributions, one-half of one percent of the new, increased, or additional contributions, but not less than \$100 nor more than \$2500.

(e) Change of Registered Office or Agent or Named General Partner(s). (1) A qualified foreign limited partnership and the general partner(s) named in its qualification statement may change the registered office or the registered agent, or both, by filing with the Secretary of State a statement (signed by the partnership and the general partner(s) named in its qualification statement) designating the new office address or agent, and paying a fee of \$10;

(2) A qualified foreign limited partnership may change the general partner(s) named in its qualification statement by filing with the Secretary of State a statement (signed by the partnership and by the general partner(s) who will thereafter be the named partner(s)) designating the named general partner(s) and containing his or their consent to be served with process in Texas through the limited partnership's registered agent in any proceeding for the enforcement of an obligation of the limited partnership, and paying a fee of \$10.

(f) Termination of Qualification. A qualified foreign limited partnership may terminate its qualification by filing with the Secretary of State a statement that it terminates its qualification, and paying a fee of \$25.

(g) Signatures on Filings. Except as otherwise provided, any statement filed under this Section 32 shall be signed by one of the general partners of the limited partnership or another person authorized to act on behalf of the limited partnership.

(h) Effect of Failure to File Amendments or Changes. Until changed by filing under Section 32(d), (e), or (f), a prior filing remains in effect.

(i) Forms. The Secretary of State shall have authority to promulgate and distribute forms for use under this Section 32.

(j) Service of Process. (1) The registered agent designated under Section 32(b) of this Act by a foreign limited partnership and a general partner(s) named in its qualification statement shall be an

agent of the foreign limited partnership and such general partner(s) upon whom any process, notice, or demand required or permitted by law to be served upon the foreign limited partnership and/or such general partner(s) may be served.

(2) Nothing herein shall limit or affect the right to serve any process, notice, or demand under Chapter 43, Acts of the 56th Legislature, Regular Session, 1959 (Articles 2031b and 2033, Vernon's Texas Civil Statutes), or in any other manner now or hereafter permitted by law.

(k) No Inference from this Section. This section shall not give rise to an inference as to the law governing:

(1) a foreign limited partnership before the effective date of this section, or

(2) a foreign limited partnership after the effective date of this section, which does not qualify hereunder.

Powers of Attorney

Sec. 33. A certificate of limited partnership or any other document required or permitted by this Act may be signed and sworn to by a limited partner in person or through an attorney in fact, who may, but need not, be a member of the limited partnership. A general partner who is a corporation may act as an attorney in fact for purposes of this Act. [Amended by Acts 1977, 65th Leg., p. 1107, ch. 408, § 1, eff. June 15, 1977.]

TITLE 106

PATRIOTISM AND THE FLAG

Art. 6142a. Clarifying Description of Texas Flag

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

Rules Governing the Use of the Texas Flag

Sec. 6. When the Texas Flag is displayed out-of-doors, it should be on either a flagpole or a staff, and the staff should be at least two and one-half times as long as the Flag. The Flag is always attached at the spearhead end of the staff, and the heading must be made of material strong enough to protect the Colors.

The Texas Flag should not be displayed outdoors earlier than sunrise nor later than sunset. However, when a patriotic effect is desired, the Texas Flag may be displayed 24 hours a day if properly illuminated during the hours of darkness, or under the same circumstances as the Flag of the United States of America may be displayed.

The Texas Flag should not be displayed on days when the weather is inclement, unless a weather-proof flag is displayed.

The Texas Flag should be displayed on all State Memorial Days and on special occasions of historical significance.

Every school in Texas should fly the Texas Flag on all regular school days. This courtesy is due to the Lone Star Flag of Texas.

The Texas Flag should always be hoisted briskly, and furled slowly with appropriate ceremonies.

The Texas Flag should not be fastened in such a manner that it can be torn easily.

When the Texas Flag is flown from a flagpole or staff, the white stripe should always be at the top of the Flag, except in cases of distress, and the red stripe should be directly underneath the white.

The Texas Flag should be on the marching left when it is carried in a procession in which the Flag of the United States of America is unfurled.

The Texas Flag should be on the left of the Flag of the United States of America, and its staff should be behind the staff of the Flag of the United States of America when the two are displayed against a wall from crossed staffs.

When the Texas Flag is flown on a flagpole adjacent to the flagpole on which the Flag of the United States of America is flown, it should be unfurled after the Flag of the United States of America, and it should be displayed at the left of the Flag of the United States of America.

When the Texas Flag and the Flag of the United States of America are displayed at the same time, they should be flown on separate flagpoles of equal length, and the Flags should be approximately the same size. However, when it is necessary for the Texas Flag and the Flag of the United States of America to be flown from the same halyard, the Texas Flag must be beneath the Flag of the United States of America.

When the Texas Flag is flown from a window-sill, balcony, or front of a building, and flat against the wall, it should be on a staff, and the blue field should be at the observer's left.

When the Texas Flag and the Flag of the United States of America are displayed on a speaker's platform at the same time, the Texas Flag should be on the left side of the speaker, while the Flag of the United States of America is on the right side of the speaker.

The Texas Flag should never be used to cover a platform or speaker's desk, nor to drape over the front of a speaker's platform.

When the Texas Flag is displayed flat on the wall of a platform, it should be above the speaker, and the blue field must always be at the Flag's right.

When the Texas Flag is displayed on a motor car, the staff should be fastened firmly to the chassis of the car, or clamped firmly to the right fender, unless the Flag of the United States of America is flown on the right fender, in which case the Texas Flag should be so displayed on the left fender.

When the Texas Flag is displayed on a float in a parade, it should always be attached securely to a staff.

The Texas Flag should not be allowed to touch the ground or the floor, nor to trail in water.

The Texas Flag should not be draped over the hood, top, sides, or back of any vehicle, or of a railroad train, boat, or aircraft.

The Texas Flag should not be used as a covering for a ceiling.

The Texas Flag should not be used as any portion of a costume or athletic uniform.

The Texas Flag should not be embroidered upon cushions or handkerchiefs, nor printed on paper napkins or boxes.

The Texas Flag must not be treated disrespectfully by having printing or lettering of any kind placed upon it.

The Texas Flag should not be used in any form of advertising, and, under no circumstances, may advertisements of any kind be attached to the flagpole or staff.

It is disrespectful to the Texas Flag to use it for purposes of decoration, either as a covering for automobiles or floats in a parade, or for draping speakers' platforms or stands, or for any other similar purpose of decoration. For such purposes of decoration the colors of the Flag may be used in bunting or other cloth.

The Texas Flag should, whenever practicable, not be carried flat or horizontally, but always aloft and free, as it is carried in a parade.

The Texas Flag is flown at half-mast by first raising it to the top of the flagpole, and then slowly lowering it to a position one-half of the distance down the flagpole, and there leaving it during the time it is to be displayed. In taking the Flag down, it should first be raised to the top of the flagpole, and then slowly lowered with appropriate ceremony.

The Texas Flag should not be displayed, used, nor stored in such a manner that it can be easily soiled or otherwise damaged.

When the Texas Flag is in such condition of repair that it is no longer a suitable Emblem for displaying, it should be totally destroyed, preferably by burning, and that privately; or this should be done by some other method in keeping with the spirit of respect and reverence which all Texans owe the Emblem which represents the Lone Star State of Texas. [Amended by Acts 1977, 65th Leg., p. 728, ch. 272, § 1, eff. Aug. 29, 1977.]

Art. 6144f. Texas Tourist Development Agency

Texas Tourist Development Board

Sec. 1.

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

(f) The Texas Tourist Development Agency is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the agency is abolished, and this Act expires effective September 1, 1989.

[See Compact Edition, Volume 5 for text of 2 to 4]

¹ Article 5429k.

[Amended by Acts 1977, 65th Leg., p. 1855, ch. 735, § 2.165, eff. Aug. 29, 1977.]

Art. 6144g. Commission on the Arts and Humanities

[See Compact Edition, Volume 5 for text of 1]

Application of Sunset Act

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

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 2 to 8]

[Amended by Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.080, eff. Aug. 29, 1977.]

Art. 6145. Texas Historical Commission

[See Compact Edition, Volume 5 for text of 1 and 1a]

Application of Sunset Act

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

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 2 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. Upon the expiration of the time limits imposed by this section, the person may proceed, but must proceed within 180 days of the expiration of the time the notice was given or the notice shall be deemed to have expired.

(3) Nothing in this Act shall give the Commission the authority to review or determine the placement or location of any object within or on a Recorded Texas Historic Landmark which placement or location results in no substantial structural damage or change.

[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, 2, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1759, ch. 707, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.083, eff. Aug. 29, 1977.]

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 purpose 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.

Art. 6145-2. Battleship "Texas" as a Permanent Memorial; Commission of Control; Maintenance and Operation

[See Compact Edition, Volume 5 for text of 1]

Commission Created; Membership; Terms

Sec. 2. There is hereby created a Commission of Control for the Battleship "Texas" to be known as the Battleship Texas Commission and which will hereinafter, in this Act, be referred to as merely the Commission, to be composed of nine (9) members appointed by the Governor of the State of Texas from the personnel comprising the following organizations, in the number stated:

General Public—Members at large	2 Members
Sons of the Republic of Texas	1 Member
Daughters of the Republic of Texas	1 Member
Texas State Historical Association	1 Member
Texas Navy League	1 Member
Disabled Veterans (D.A.V.)	1 Member
American Legion	1 Member
Veterans of Foreign Wars of the U.S.	1 Member

The members of the Commission hold office for staggered terms of six (6) years with the terms of three (3) members expiring every two (2) years. Each member holds office until his successor is appointed and has qualified. The terms expire on May 1 of odd-numbered years. All appointees of the Governor shall be confirmed by a two-thirds (2/3) vote of the Senate of the State of Texas present.

Application of Sunset Act

Sec. 2a. The Battleship Texas Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1979.

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 3 to 5]

Secretary; Meetings; Seal; Repairs; Revenues; Bonds

Sec. 6. The Commission shall select one of its members as Chairman, and shall select a Secretary who may or may not be a member. The Commission shall meet on the first Thursday of each month and at such other times as the Chairman deems necessary, by giving the other members notice in writing thereof. The Commission shall procure and adopt a seal bearing the words "State of Texas Battleship Texas Commission" encircled by the oak and olive branches.

The Commission shall have the duty of maintaining and keeping in proper repair the Battleship Texas located in San Jacinto State Park, and shall exact fees or charges from persons for the admission to and inspection of said vessel. Said Commission shall have the power to let concession contracts to the highest bidders for the sale of wares or merchandise to visitors in connection with admission to and inspection of said vessel, and such fees and charges and concession revenues shall be used to pay the operation, repair, and maintenance expenses of said vessel. Said Commission shall also have the power and authority to issue negotiable revenue bonds in the name of "State of Texas Battleship Texas Commission" for the purpose of repairing or improving said vessel or for the construction of protective improvements, including the construction of a bulk-

head or bulkheads to prevent erosion around the slip wherein said vessel is berthed or located. Said bonds shall be secured by and payable solely from the net revenues derived by the hereinabove mentioned fees and charges and concession contracts. The Commission is hereby given complete discretion in fixing the form, conditions, and details of such bonds, and in entering into covenants relating to the use of the net revenues in connection with said bonds. Said bonds shall not in any manner constitute an indebtedness of the State of Texas or of said Commission, but shall be payable solely from the net revenues as above specified, and each of said bonds shall have words to this effect printed on the face thereof. Any interest or principal falling due during the period of the construction of repairs or improvements or protective work and all costs incident to the issuance and sale of the bonds may be paid from the bond proceeds. Said bonds shall mature serially over a period of years not to exceed forty (40), bear interest at a rate not to exceed three (3%) per cent per annum, be signed by the Chairman of the Commission and countersigned by the Secretary; provided that the interest coupons may bear the facsimile signatures of such officers. Said bonds shall be sold for not less than their par value plus accrued interest. Said bonds shall be submitted to the Attorney General for examination, and upon approval, shall be registered by the Comptroller of Public Accounts. After such approval and registration and delivery to the purchaser or purchasers, said bonds shall be incontestable. Such bonds and the interest thereon shall be exempt from taxation by the State of Texas or by any municipal corporation, county or political subdivision, or taxing district of the State. While said bonds or any of them are outstanding, the Commission shall fix said fees and charges for admission and inspection and the payments under the concession contracts in an amount as will be ample to produce sufficient net revenues (the revenues remaining from the gross revenues after the payment of all proper expenses of operation and maintenance) to pay all requirements of such bonds and to create, establish, and maintain such reserves as may be specified in the proceedings authorizing the issuance of such bonds. The Commission shall have the power and duty to revise the fees and charges so that the net revenues will at all times be sufficient for the purpose described above. Any bonds issued under this Act may be refunded at the same or a lower rate of interest upon the cancellation by the Comptroller of the bonds being refunded at the time of registration of the refunding bonds, the said refunding bonds to be issued under the terms and conditions of this Act relating to the original bonds.

No net revenues derived from admission or inspection fees and charges or from concession contracts shall be paid into the General Revenue Fund when there are outstanding revenue bonds payable from

said net revenues; provided that if there are no such outstanding revenue bonds, then on August 31st of each year while there are no such outstanding bonds, the Commission shall cause to be paid into the State Treasury of the State of Texas for the benefit of the General Revenue Fund all net revenues then on hand in excess of Three Hundred Thousand Dollars (\$300,000).

Books of Account and Records

Sec. 7. The Commission shall maintain books of account and records concerning all revenue derived from the sale of admissions to the public and all expenses incurred in maintaining and operating the Battleship as a public memorial.

[See Compact Edition, Volume 5 for text of 8 and 9]

Sec. 10. Repealed by Acts 1977, 65th Leg., p. 812, ch. 302, § 4, eff. May 30, 1977.

[See Compact Edition, Volume 5 for text of 11 and 12]

Compensation

Sec. 13. No member of the Commission or of the Operating Board shall receive any salary for the performance of his duties under this Act.

[See Compact Edition, Volume 5 for text of 14]

[Amended by Acts 1977, 65th Leg., p. 810, ch. 302, §§ 1 to 5, eff. May 30, 1977; Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.006, eff. Aug. 29, 1977.]

Art. 6145-3. Texas Stonewall Jackson Memorial Board; Memorial Fund; Scholarships

[See Compact Edition, Volume 5 for text of 1]

Sec. 1a. The Texas Stonewall Jackson Memorial Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1979.

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

[Amended by Acts 1977, 65th Leg., p. 1832, ch. 735, § 2.003, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 6145-7. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(4), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Without reference to repeal of this article, Acts 1977, 65th Leg., p. 1844, ch. 735, § 2.086, added § 1a thereto reading:

"The Texas Conservation Foundation is subject to the Texas Sunset Act [art. 5429k]; and unless continued as provided by that Act the foundation is abolished, and this Act expires effective September 1, 1985."

Art. 6145-9. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(4), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Without reference to repeal of this article, Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.079, added § 3a thereto reading:

"The Antiquities Committee is subject to the Texas Sunset Act [art. 5429k]; and unless continued in existence as provided by that Act the committee is abolished effective September 1, 1983."

Art. 6145-10. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(4), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Without reference to repeal of this article, Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.081, added § 1a thereto reading:

"The Texas Historical Resources Development Council is subject to the Texas Sunset Act [art. 5429k]; and unless continued in existence as provided by that Act the council is abolished, and this Act expires effective September 1, 1983."

TITLE 108

PENITENTIARIES

1. DEPARTMENT OF CORRECTIONS

Article

6166b-1. Application of Sunset Act [NEW].

2. REGULATIONS AND DISCIPLINE

6181-1. Inmate Classification and Good Conduct Time [NEW].

6184n. Temporary Furloughs for Inmate's Illness or Family Critical Illness or Funerals [NEW].

6203c-2. Construction of Medical Facilities at University of Texas Medical Branch at Galveston [NEW].

1. DEPARTMENT OF CORRECTIONS

Art. 6166b-1. Application of Sunset Act

The Texas Board of Corrections is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1987.

[Added by Acts 1977, 65th Leg., p. 1850, ch. 735, § 2.130, eff. Aug. 29, 1977.]

¹ Article 5429k.

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 Correc-

tions 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. 6166v. Repealed by Acts 1977, 65th Leg., p. 933, ch. 347, § 6, eff. Aug. 29, 1977

See, now, art. 6181-1.

Art. 6166x-3. Work Furloughs

Employment of Prisoners Outside the State Prison System

Sec. 1. The Texas Department of Corrections is hereby authorized to grant work furlough privileges, under the "Work Furlough Plan," as hereinafter provided, which may include programs and procedures for inmates to contribute restitution or reparation to victims of the prisoner's crime, as established by the judgment of the court that sentenced the prisoner to his term of imprisonment, to any inmate of the state prison system serving a term of imprisonment, under such rules, regulations, and conditions as the department of corrections may prescribe.

Texas Work Furlough Program Advisory Board

Sec. 1A. (a) The Texas Work Furlough Program Advisory Board is hereby created. Its main office is

in Huntsville, Texas, at the location of the office of the director of the Texas Department of Corrections.

(b) The board is composed of nine members appointed by the governor with the advice and consent of the senate. Except for the initial appointees, the members of the board hold office for terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year. In making the initial appointments, the governor shall designate three for terms expiring January 31, 1979, three for terms expiring January 31, 1981, and three for terms expiring January 31, 1983. The governor shall make the appointments in such a manner that the term of one member representing a recognized labor union, as required by Subsection (d) of this section, expires every two years.

(c) To be qualified for appointment as a member of the board, a person must be a citizen of the United States and a resident of Texas.

(d) Not less than three members of the board shall be representatives of recognized labor unions. The balance of the board membership shall be broadly representative of the noncorrectional general public and should include representatives of such groups as, for example, employer groups, local bar associations, citizen organizations, educators, social work professionals, and various entities in the criminal justice system, such as law enforcement agencies and probation and parole departments.

(e) Members of the board qualify by taking the constitutional oath of office before an officer authorized to administer oaths in this state. When a board member presents his oath of office and the certificate of his appointment to the secretary of state, the secretary of state shall issue a commission to him. The commission from the secretary of state is evidence of authority to act as a member of the board.

(f) The board shall formally elect a chairman and a secretary-treasurer from its members. The board may adopt rules necessary for the orderly conduct of its business.

(g) Five members of the board shall constitute a quorum for the transaction of business and may act for the board. The board shall prepare and preserve minutes and other records of its proceedings and actions.

(h) Members of the board do not receive a salary for their services but each member is entitled to \$25 for each day spent in attending meetings of the board, including time spent in travel to and from the meetings, not to exceed \$500 a year. Members of the board are also entitled to be reimbursed for travel and other necessary expenses incurred while performing their official duties if the expenses are evidenced by voucher approved by the chairman or the secretary-treasurer of the board.

(i) It shall be the functions of the board to advise the department of corrections in its administration of the Work Furlough Program and to provide a forum for the hearing and resolution of grievances against the program. In the fulfillment of its grievance resolution functions, the board shall have immediate access to all records maintained by the department in its administration of the Work Furlough Program and may request further pertinent information from the department not found in those records.

(j) The board shall prepare an annual report to be filed not later than 60 days following the close of each fiscal year with the governor, the lieutenant governor, members of the legislature, and the legislative budget board showing the activities of the board, together with such recommendations regarding the Work Furlough Program as deemed advisable.

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

Securing Employment

Sec. 4. The director of the department of corrections shall endeavor to secure employment for unemployed eligible prisoners under this Act, subject to the following:

(1) such employment must be at a wage at least as high as the prevailing wage for similar work in the area or community where the work is performed and in accordance with the prevailing working conditions in such area;

(2) such employment shall not result in the displacement of employed workers or be in occupations, skills, crafts, or trades in which there is a surplus of available and qualified workers in the locality, the existence of such surplus to be determined by the Texas Employment Commission;

(3) prisoners eligible for work furlough privileges shall not be employed as strikebreakers or in impairing any existing contracts;

(4) exploitation of eligible prisoners, in any form, is prohibited either as it might affect the community or the inmate or the department of corrections;

(5) in the event a work furlough employer desires to reduce its labor force, it must release its work furlough inmate employees prior to releasing any of its free employees;

(6) not more than 10 percent of a work furlough employer's labor force shall be composed of work furlough inmates unless prior special emergency approval for temporarily exceeding that percentage be secured from the Texas Work Furlough Program Advisory Board;

(7) in the event a work furlough employer provides its employees with paid vacation leave which, due to their incarceration, work furlough inmates are unable to enjoy, said employer must either hold accrued vacation time for the inmate to take after discharge from the department of corrections or, at the election of the inmate, the employer must pay the inmate regular wages for the accrued vacation time;

(8) in the event a National Labor Relations Board certification or decertification election is to be conducted at any premises of a work furlough employer, no prisoners employed by the employer under this Act shall be permitted to participate in the election.

[See Compact Edition, Volume 5 for text of 5]

Disbursement of Wages or Salaries

Sec. 6. Every prisoner gainfully employed under work furlough privileges is liable for the cost of his keep in the prison or quarters as may be fixed by the department of corrections. Such payments shall be deposited to the general operating expenses of the department of corrections. After deduction of such amounts the director of the department of corrections shall disburse the wages or salaries of employed prisoners for the following purposes and in the order stated:

(1) necessary travel expense to and from work and other incidental expenses of the prisoner;

(2) support of the prisoner's dependents, if any;

(3) restitution or reparation to the victim of the prisoner's crime for which he is serving a term of imprisonment, the total amount of such restitution or reparation as may be established by the court and entered in the judgment of the court that sentenced the prisoner to his term of imprisonment;

(4) the balance, if any, to the prisoner upon his discharge.

[See Compact Edition, Volume 5 for text of 7 and 8]

Rights of Prisoners

Sec. 9. Nothing in this Act is intended to restore, in whole or in part, the civil rights of any prisoner. However, prisoners compensated under this Act shall come within the provisions of the Workmen's Compensation Act, as amended, and shall be entitled to benefits thereunder on behalf of themselves as well as any other persons.

[See Compact Edition, Volume 5 for text of 10 and 11]

[Amended by Acts 1977, 65th Leg., p. 674, ch. 255, § 1, eff. May 25, 1977; Acts 1977, 65th Leg., p. 850, ch. 319, §§ 1 to 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 933, ch. 347, § 5, eff. Aug. 29, 1977.]

Art. 6166z1. Discharge

When a convict is entitled to a discharge from the State penitentiary, or is released therefrom on parole, mandatory supervision, or conditional pardon, the Director of the Department 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, mandatory supervision, or conditional pardon shall be \$200. [Amended by Acts 1975, 64th Leg., p. 2401, ch. 735, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 933, ch. 347, § 4, eff. Aug. 29, 1977.]

2. REGULATIONS AND DISCIPLINE

Art. 6181-1. Inmate Classification and Good Conduct Time

Sec. 1. For the purpose of this Article:

(1) "Department" means the Texas Department of Corrections.

(2) "Director" means the Director of the Texas Department of Corrections.

(3) "Inmate" means a person confined by order of a court in the Texas Department of Corrections, whether he is actually confined in the institution or is under the supervision or custody of the Board of Pardons and Paroles.

(4) "Term" means the maximum term of confinement in the Texas Department of Corrections stated in the sentence of the convicting court. When two or more sentences are to be served consecutively and not concurrently, the aggregate of the several terms shall be considered the term for purposes of this Article. When two or more sentences are to run concurrently, the term with the longest maximum confinement will be considered the term for the purposes of this Article.

Sec. 2. The department shall classify all inmates as soon as practicable upon their arrival at the department and shall reclassify inmates as circumstances may warrant. All inmates shall be classified

according to their conduct, obedience, industry, and prior criminal history. The director shall maintain a record on each inmate showing all classifications and reclassifications with dates and reasons therefor.

Sec. 3. (a) Inmates shall accrue good conduct time based upon their classification as follows:

(1) 20 days for each 30 days actually served while the inmate is classified as a Class I inmate;

(2) 10 days for each 30 days actually served while the inmate is classified as a Class II inmate; and

(3) 10 additional days for each 30 days actually served if the inmate is a trusty.

(b) No good conduct time shall accrue during any period the inmate is classified as a Class III inmate or is on parole or under mandatory supervision.

Sec. 4. Good conduct time applies only to eligibility for parole or mandatory supervision as provided in Section 15, Article 42.12, Code of Criminal Procedure, 1965, as amended, and shall not otherwise affect the inmate's term. Good conduct time is a privilege and not a right. Consequently, if during the actual term of imprisonment in the department, an inmate commits an offense or violates a rule of the department, all or any part of his accrued good conduct time may be forfeited by the director. The director may, however, in his discretion, restore good conduct time forfeited under such circumstances subject to rules and policies to be promulgated by the department. Upon revocation of parole or mandatory supervision, the inmate loses all good conduct time previously accrued, but upon return to the department may accrue new good conduct time for subsequent time served in the department.

Sec. 5. If the release of an inmate falls upon a Saturday, Sunday, or legal holiday, the inmate may, at the discretion of the director, be released on the preceding workday.

[Added by Acts 1977, 65th Leg., p. 932, ch. 347, § 3, eff. Aug. 29, 1977.]

Art. 6184d. Repealed by Acts 1977, 65th Leg., p. 1910, ch. 761, § 1, eff. Aug. 29, 1977

Art. 6184l. Repealed by Acts 1977, 65th Leg., p. 933, ch. 347, § 6, eff. Aug. 29, 1977

See, now, art. 6181-1.

Art. 6184m. Alcoholic Beverages, Controlled Substances or Dangerous Drugs; Furloughing to Prisoners; Punishment

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

Sec. 2. As used this Act, "alcoholic beverage" shall have the meaning defined in the Alcoholic

Beverage Code, as heretofore or hereafter amended; "controlled substance" means any substance defined as a controlled substance by the Texas Controlled Substances Act; and "dangerous drug" means any substance defined as a dangerous drug by Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 5 for text of 3 and 4]

[Amended by Acts 1977, 65th Leg., p. 558, ch. 194, § 6, eff. Sept. 1, 1977.]

Art. 6184n. Temporary Furloughs for Inmate's Illness or Family Critical Illness or Funerals

Medical Furloughs

Sec. 1. The Texas Department of Corrections may grant a medical furlough to any inmate serving a term of imprisonment in the department for the purpose of obtaining medical treatment, diagnosis, or medical study, and under such security conditions as the department may deem necessary and proper.

Furloughs to Attend Funerals or Visit Critically Ill Relatives

Sec. 2. (a) The Texas Department of Corrections may grant temporary furloughs of not more than five days to inmates who are considered acceptable security risks by the department to attend funerals or to visit critically ill relatives.

(b) The department may extend a temporary furlough granted under this section for up to 10 days when the circumstances justify a longer furlough, but in no event may the department grant more than two such furloughs during a calendar year period without the authority of the Board of Pardons and Paroles and of the governor, as in the case of emergency reprieves.

Rules

Sec. 3. The department shall promulgate rules in the same manner as other rules for the governing and operation of the department are promulgated to govern the administration and conditions of temporary furloughs.

Notice to Board of Pardons and Paroles

Sec. 4. The department shall notify the Board of Pardons and Paroles of a furlough granted under this article and of an inmate's return to the department of corrections following a furlough.

Custody of Furloughed Inmate; Escape

Sec. 5. An inmate granted an emergency furlough under this Act or an emergency reprieve by the Board of Pardons and Paroles and the governor, whether under physical guard or otherwise, shall remain in the custody of the Texas Department of

Corrections and be considered a prisoner of the department for all purposes. In the event an inmate of the department granted an emergency furlough under this Act or an emergency reprieve by the board and the governor does not return to the department at the time specified for his return, he shall be considered an escapee from the department and subject to punishment under Article 38.07, Texas Penal Code.

[Added by Acts 1977, 65th Leg., p. 38, ch. 22, § 2, eff. Aug. 29, 1977.]

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.

Art. 6203c-2. Construction of Medical Facilities at University of Texas Medical Branch at Galveston

Sec. 1. The Texas Board of Corrections is authorized to construct a medical facility and necessary related facilities on the campus of the University of Texas Medical Branch at Galveston, subject to the prior written approval of the site, plans, and specifications for such facility and an interagency operating agreement by the Texas Department of Corrections and the Board of Regents of The University of Texas System.

Sec. 2. So long as such medical facility is used for patients of the Texas Department of Corrections, the facility will be utilized as a teaching hospital limited to such patients who shall at all times be teaching patients. The Board of Regents of The University of Texas System shall maintain and operate such facility (except for security measures) and shall otherwise provide professional staff services necessary for the care of patients in such facility at the same level of care as provided for patients in other facilities of the University of Texas Medical Branch at Galveston from funds appropriated for those purposes. In the event the facility is no longer used for patients of the Texas Department of Corrections, such facility shall revert to the medical branch for its use and shall be operated under the exclusive management and control of the Board of Regents of The University of Texas System.

Sec. 3. The interagency operating agreement referred to in Section 1 of this Act shall provide for the Board of Regents of The University of Texas System to construct such facility on behalf of the Texas Department of Corrections with funds appropriated to the department for such purpose and in conformity with the rules of the Board of Regents of The University of Texas System relative to new construction.

[Acts 1977, 65th Leg., p. 1315, ch. 520, §§ 1 to 3, eff. Aug. 29, 1977.]

TITLE 109

PENSIONS

1. STATE AND COUNTY PENSIONS

Article

- 6228a-6. Administration of Social Security Programs by Employees Retirement System [NEW].
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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. 1. Nothing in this subsection shall be construed to impair a right to benefits arising from creditable service established on or before December 31, 1977.

2. On and after January 1, 1978, there shall be two classes of membership in the Employees Retirement System of Texas:

- a. elective state official
- b. appointive officer or employee.

3. On and after January 1, 1978, the membership of the system in the elective state official class shall be all statewide elected officials, members of the State Legislature, and district attorneys receiving salaries paid by the state General Revenue Fund who choose to become members. An elective state official, may, prior to leaving office and upon payment of all applicable contributions, fees, and inter-

est applicable from the fiscal year in which creditable service was performed, receive creditable service for any calendar year in which the member was eligible to take the oath of office, or in which he served. It is expressly provided that such payment shall be in a lump sum and that in no case may an elective state official receive credit for more than 12 months creditable service for any calendar or fiscal year. The elective state official class shall not include any other elective official of a district, county, or municipality, nor of the court system of the State of Texas.

4. On and after January 1, 1978, the membership of the system in the appointive officer or employee class shall include appointive officers and employees of any department, commission, institution, or agency of the State of Texas with the following exceptions:

- a. persons who are employed in a position covered by the Teachers' Retirement System of Texas or the Judicial Retirement System.
- b. persons who are independent contractors or employees of independent contractors performing work for the State of Texas.

5. Membership is terminated by death, retirement, or withdrawal of contributions.

B. 1. Nothing in this subsection shall be construed to impair a right to benefits arising from creditable service established on or before December 31, 1977.

2. On and after January 1, 1978, service creditable as elective state official service shall be limited to service as a member of that class as defined in this Act including active duty military service creditable under this Act but not to exceed the amount of active duty military service actually performed. Any member may establish in, or have transferred to, his appointive officer or employee account any credit for elective state official service if the contributions required to establish that service were of an amount equal to or exceeding the contributions required of an appointive officer or employee at the same rate of pay.

3. On and after January 1, 1978, service creditable as appointive officer or employee service shall be limited to credit for service actually performed as an

appointive officer or employee of the State of Texas to be granted in accordance with the rules of the board of trustees at the time the service is performed, such active duty military service as is creditable under the terms of this Act, and service transferred to the Employees Retirement System of Texas under the terms of Chapter 75, Acts of the 54th Legislature, 1955, as amended (Article 6228a-2, Vernon's Texas Civil Statutes), to be granted in accordance with the rules of the board of trustees at the time the service is transferred. Provided, however, that any member of an administrative board of a statutory state department, agency, or commission as defined in Section 4H.2. of this Act may, on or before December 31, 1977, become a contributing member of the Employees Retirement System of Texas, and only persons who establish retirement credit for board service during December, 1977, may continue to establish credit for subsequent, continuous board service in the manner prescribed by that section and purchase his previous service in accordance with the terms of this Act. Only those members who, on or before December 31, 1977, held a position named in Section 5B.5. of this Act may retire under the terms of that section.

4. Any person who becomes an elective state official by reason of election or appointment shall within six months from the month in which he takes the oath of office execute an election to become a member of the retirement system or not to become a member of the retirement system. This election shall be filed with the state board of trustees on a form provided by the board. Following election to become a member, contributions shall be due and payable for the month in which he took the oath of office and each month of creditable service thereafter.

5. Any retirement credit established after December 31, 1977, for active duty military service may not be included in calculating service retirement benefits or nonoccupational disability retirement benefits unless the member has sufficient creditable service exclusive of military service credit to be eligible for a service retirement at age 60.

[See Compact Edition, Volume 5 for text of 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]

Creditable Service

Sec. 4.

[See Compact Edition, Volume 5 for text of 4A to H]

I. Prior to December 31, 1977, a member of the system with established creditable service as an officer or employee, exclusive of military credit, for no less than 12 of the 60 months immediately preceding the date of this amendment, may establish service performed as a National Guard Technician with the Texas Adjutant General's Department if such service was performed prior to January 1, 1969, and is not otherwise creditable in any state or federal retirement system. Service shall be established for retirement purposes upon payment in a lump sum of all applicable contributions, interest, and fees. All such amounts, and state matching funds therefor, shall be calculated in the manner and amounts provided in this Act for service not previously established.

[See Compact Edition, Volume 5 for text of 4J]

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 employment. 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]

6. If any contributing member with less than 20 years of creditable service dies after becoming eligible for a service retirement by meeting the requirement of creditable service and attained age, an annuity may be paid to the member's surviving spouse or minor children. The surviving spouse may select an option plan in the same manner as the member could have if he had retired on the last day of the month of his death. If there is no surviving spouse, the guardian of the deceased member's surviving minor children may select an option plan for the benefit of the minor children. If there is no surviving spouse or minor children, no annuity may be paid pursuant to this subdivision.

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 annuities payable to retired employees or appointed officers or their survivors on and after September 1, 1977. Nothing in this section shall be construed to reduce any preexisting annuity. Service retirement standard annuities payable for appointive officers and employees by virtue of retirements or deaths occurring on and after August 31, 1977, shall be

computed on the basis of the average monthly compensation of the member for the thirty-six (36) highest months of compensation during the last sixty (60) 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. 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 to such persons as may be designated by the retired member in a signed and witnessed writing. If the retired member makes no such written designation, the benefit shall be paid to the executor or administrator of his estate, or, if there is no executor or administrator of the estate, then payment shall be under the laws of descent and distribution. 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. 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.

Benefit Increases for Retirement or Death Before August 31, 1976

Sec. 5-3. Monthly benefits, payable to appointive officers or employees who retired on or before August 31, 1976, or their survivors, or to survivors of deceased appointive officer or employee members whose death occurred on or before August 31, 1976, shall be increased effective with the June, 1977, benefit payment. Such increases shall be computed as follows:

(a) Each year of creditable service up to 30 years multiplied by the sum of:

(1) 75 cents, plus

(2) two cents for the fiscal year in which the retirement or death occurred plus two cents for each fiscal year thereafter through August 31, 1976, but not to exceed 50 cents.

(b) For each year of creditable service in excess of 30 years, there shall be an additional increase per month equal to one-half the amount provided for each year of service in Subsection (a).

(c) The reduction factors applied at the time of retirement to each member's retirement benefits for early age retirement and for retirement under the option selected by that member shall also be applied to the increases provided in this section.

Administration

Sec. 6. A. State Board of Trustees.

[See Compact Edition, Volume 5 for text of 1]

1a. The State Board of Trustees of the Employees Retirement System of Texas is subject to the Texas Sunset Act,¹ but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1989 and of every 12th year after 1989 are reviewed.

[See Compact Edition, Volume 3 for text of 6A2 to D]

¹ Article 5429k.

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, 1977, 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 eight per cent (8%) 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 eight per cent (8%) of the aggregate compensation of all members and shall be paid in monthly installments. For creditable service not previous-

ly 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 (½) 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 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 granted and in force except as hereinafter provided, 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.

6. Benefit Increase Reserve Fund.

The Benefit Increase Reserve Fund shall be the fund in which shall be held all reserves for increases in preexisting annuities for appointive officer and employee members and their survivors authorized by the legislature after April 30, 1977.

(a) The Benefit Increase Reserve Fund shall consist of:

(1) Money appropriated to pay increases in preexisting annuities authorized by the legislature for appointive officer and employee members and their survivors after January 31, 1977.

(2) Interest transferred from the Interest Fund in an amount calculated at a rate set by the board of trustees after consulting with the actuary as representing a reasonable recognition of earnings from the investments of assets accrued to the Benefit Increase Reserve Fund.

(b) Upon certification by the Employees Retirement System of Texas, the comptroller of public accounts shall transfer each month from the Benefit Increase Reserve Fund to the Retirement Annuity Reserve Fund the estimated amount required for the payment of increases in preexisting annuities authorized by the legislature for appointive officer and employee members and their survivors after April 30, 1977.

[See Compact Edition, Volume 5 for text of 8B and 8C]

Exemption from Execution; Group Insurance; Confidentiality of Records; Lump Sum for Accumulated Leave; Benefit Assignment to Secure Loan Establishing Creditable Service

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.

D. A member of the Employees Retirement System of Texas who is retiring, who waived membership under terms of Chapter 352, Acts of the 50th Legislature, 1947, as amended, who has been an employee of the State of Texas for not less than 60 of the 120 months immediately preceding the date of

this amendment, and who has not withdrawn his contributions, may assign his retirement benefits to secure a loan made for the sole purpose of establishing creditable service. Upon payment of required contributions, interest, and fees for all membership service on and after September 1, 1947, the member may be granted credit for prior service.

[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.

Impairment of Creditable Service and Benefit Rights

Sec. 15. It is expressly provided that creditable service and benefit rights established by or accrued to state officers and employees pursuant to Chapter 352, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), may not thereafter be diminished or impaired.

[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; Acts 1977, 65th Leg., p. 745, ch. 279, §§ 1 to 3, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 967, ch. 364, §§ 1 to 3, 5, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 976, ch. 367, §§ 1 to 3, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 1856, ch. 735, § 2.175, eff. Aug. 29, 1977.]

Sections 1 to 3 of Acts 1977, 65th Leg., ch. 279, amended §§ 3, subsec. B; 4, subsec. 1; and 9, subsec. D of this article; §§ 4 and 5 thereof provided:

"Sec. 4. This Act shall become effective September 1, 1977.

"Sec. 5. All provisions of law in conflict with the provisions of this Act are hereby repealed to the extent of such conflict."

Section 1 of Acts 1977, 65th Leg., p. 967, ch. 364, added § 5-3; § 2 thereof amended § 8, subsec. A, par. 3; § 3 added par. 6 to § 8, subsec. A; and § 4 provided:

"Sec. 4. In addition to the amounts provided elsewhere, there is hereby authorized an appropriation to the Employees Retirement System of Texas of the sum of \$19,489,267 to fund the increases in benefits provided by Section 1 of this Act. Such increases are conditioned to be effective, and shall be effective, only upon the appropriation and payment of said sum. There is hereby appropriated from the General Revenue Fund to the Employees Retirement System of Texas \$19,489,267 in addition to all other appropriations. The Comptroller of Public Accounts of Texas, on adoption of this Act, shall transfer this amount to the Employees Retirement System of Texas for deposit in the Benefit Increase Reserve Fund."

Section 4 of Acts 1977, 65th Leg., p. 981, ch. 367, provided: "This Act takes effect September 1, 1977."

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]

Qualifications for Retirement; Death Benefit Plan Selection; Retirement Pay; Reduced Annuity Plans; Retirement Age

Sec. 2. (a) Any judge in this state may, at his option, retire from regular active service after attaining the age of sixty-five (65) years and after serving on one or more of the courts of this state at least ten (10) years continuously or otherwise, provided that his last service prior to retirement shall be continuous for a period of not less than one year. Any person who has served on one or more of the

courts of this state at least twelve (12) years, continuously or otherwise, regardless of whether he is serving on a court at such time, shall after attaining the age of sixty-five (65) years, be qualified for retirement pay under this Act. Any person retiring in accordance with this Act after the effective date of this amendment shall, during the remainder of such person's lifetime receive from the State of Texas monthly a base retirement payment equal to fifty percent (50%) of the salary being received by a judge of a court of the same classification last served by such person as judge. An additional ten percent (10%) of the applicable salary shall be added to the base retirement payments to the following judges: (1) those eligible for retirement under any provisions of this Act as amended who retire at or before age seventy (70); and (2) those who are not eligible by length of service to retirement benefits at age 70 but who retire immediately upon becoming eligible. However, the additional ten percent (10%) benefit shall not be paid to any judge who has been out of office for a period of longer than one (1) year at the time he applies for retirement benefits under this Act, except that any provisions in any statute to the contrary notwithstanding, a judge who on the effective date of this amendment has retired at or before age seventy (70) and who is now serving as the presiding judge of an administrative judicial district is entitled to the additional ten percent (10%) provided in this section. Any judge drawing retirement at the effective date of this Act shall receive the same retirement pay as judges of the same classification who have retired on the current pay scale; that said judge shall be entitled to any raises based upon increases in current salary.

[See Compact Edition, Volume 5 for text of 2(a-1) to (e)]

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 and 3]

Judges of Abolished Courts; Continuity of Service

Sec. 4. Any person who was, or but for the abolishment of such Court before the expiration of his term of office would have been, serving as a Judge of a Court of this State at the time the Retirement Amendment, House Joint Resolution No. 39, was adopted November 2, 1948, and who had served on one (1) or more of the Courts of this State at least ten (10) years, continuously or otherwise, and had attained the age of sixty-five (65) years at the time of the adoption of the Retirement Amendment, shall be deemed to come within the provisions of this law and be entitled to receive retirement pay under the same terms and limitations provided in Section 2 of this Act, regardless of whether he is now serving on a Court of this State. Any person who has served on one (1) or more Courts of this State as defined herein for twenty (20) years or more at any time, continuously or otherwise, provided that his last service prior to the date of retirement shall have been continuous for a period of not less than ten (10) years, shall likewise be entitled to retirement pay under the provisions of this Act.

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-twelfthth ($\frac{1}{12}$) 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.

¹ See art. 6228a.

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

Ineligibility to Practice Law; Continuance as Judicial Officer; Assignments and Compensation

Sec. 7. During the time judges who have retired under the provisions of the Act are receiving retirement pay they shall not be allowed to appear and plead as attorneys at law in any court in this State. Any person who has retired under the provisions of this Judicial Retirement Act may elect in writing addressed to the Chief Justice of the Supreme Court within ninety (90) days after such retirement to continue as a judicial officer, in which instance they shall, with their own consent to each assignment, be subject to assignment by the Chief Justice of the Supreme Court to sit in any court of this State of

the same dignity, or lesser, as that from which they retired, and if in a District Court, under the same rules as provided by the present Administrative Judicial Act, and while so assigned, shall have all the powers of judges thereof. Any district judge or appellate judge who has retired under the provisions of this Judicial Retirement Act and has elected to continue as a judicial officer may sit as a Commissioner of the Court of Criminal Appeals, if designated and appointed by the Presiding Judge of the Court of Criminal Appeals, with his own consent to each designation and appointment. While assigned to said court, or serving as a Commissioner to the Court of Criminal Appeals, such judges shall be paid a retirement allowance equal to the salary of judges of said court, in lieu of the retirement allowance otherwise provided in this Act. No person who has heretofore retired under the provisions of this Judicial Retirement Act shall be considered to have been a judicial officer of this State after such retirement, unless such person has accepted an assignment by the Chief Justice to sit in a court of this State.

Retired Judges as Judicial Officers

Sec. 7A. (a) Any person who has retired under the provisions of this Judicial Retirement Act and who within ninety (90) days after such retirement accepts an assignment by the Chief Justice of the Supreme Court or by a Presiding Judge of an Administrative Judicial District shall continue as a judicial officer, in which instance he shall, with his own consent to each assignment, be subject to assignment by the Chief Justice of the Supreme Court or by a Presiding Judge of any Administrative Judicial District to sit in any court of this state of the same dignity, or lesser, as that from which he retired, and if in a District Court, under the same rules as provided by the present Administrative Judicial Act, and while so assigned, shall have all the powers of a judge thereof. While assigned to said court, such person shall be paid a retirement allowance equal to the salary of the judge of said court, in lieu of the retirement allowance otherwise provided in this Act.

[See Compact Edition, Volume 5 for text of 7A(b) to 8a]

Payments and Rights; Exemption From Tax, Etc.

Sec. 8b. Retirement payments, annuities, refunded contributions, optional benefits, or any other right accrued or accruing to any person under the provisions of this Act are exempt from any state, county, or municipal tax, levy, sale, garnishment, attachment, or any other process, and shall be unassignable except as provided in this Act. The retirement allowance paid to any person retired under the provisions of this Act while such person is assigned to or serving on a court and which is in lieu of the retirement allowance otherwise provided in this Act,

shall not be construed as a salary or remuneration for such assignment or service, but shall be construed as such person's retirement allowance only, notwithstanding any other provision of this Act or any other Act or statute to the contrary.

[See Compact Edition, Volume 5 for text of 9 and 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; Acts 1977, 65th Leg., p. 330, ch. 160, § 1, eff. May 20, 1977; Acts 1977, 65th Leg., p. 1117, ch. 415, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1967, ch. 785, § 1, eff. Aug. 29, 1977.]

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 or-

ganized 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 2.15]

16. "Average prior service earnings" shall mean the average monthly earnings received by an employee for service rendered to a participating subdivision during the thirty-six (36) months immediately preceding the effective date of participation of such subdivision in the System, or if there be less than thirty-six (36) months of such service, the average shall be computed for the number of months of such service within such thirty-six (36) months period; provided, however, that in calculating the average prior service earnings of any member as employee of a subdivision having a participation date prior to January 1, 1978, actual earnings in any month shall be excluded to the extent that they exceed the lower of the following rates of earnings:

(a) the annual earnings prescribed by the governing body at the time of its determination to participate in the System as the maximum current service earnings for current service deposits and contributions; or

(b) annual earnings in excess of Twelve Thousand Dollars (\$12,000.00) per annum.

[See Compact Edition, Volume 5 for text of 2.17 to 2.19]

20. "Basic Annuity" means that portion of a member's retirement benefit that is attributable to the sum of the member's accumulated deposits and the member's Accumulated Current Service Credit.

21. "Supplemental Annuity" means that portion of a member's retirement benefit that is

attributable to the sum of the member's Accumulated Allocated Prior Service Credit and his Accumulated Multiple Matching Credit. The Supplemental Annuity shall also include any increase in monthly benefit payments to annuitants granted by the participating subdivision on or after January 1, 1978.

[See Compact Edition, Volume 5 for text of 2.22 to 2.25]

26. "Actuarial Equivalent" shall mean a benefit of equal present value when computed upon the basis of such annuity or mortality tables as shall be adopted by the Board, and upon the assumption of regular interest.

27. "Current Interest" shall mean interest at a rate per centum per annum ascertained each year by dividing (1) the amount in the Interest Fund on December 31 of such year before the transfer of interest to other funds, less an amount equal to regular interest on the sum of the mean amount in the Current Service Annuity Reserve Fund during such year and the amount in the Subdivision Accumulation Fund at the beginning of such year by (2) an amount equal to the amount in the Endowment Fund at the beginning of such year and plus the sum of the accumulated deposits in the Employees Saving Fund at the beginning of such year to the credit of all members included in the membership of the System on December 31 of such year before any transfers for retirements effective December 31 of such year are made, it being provided that the above division shall be carried to only three (3) decimal places and shall never be taken as greater than the rate of regular interest.

28. "Regular Interest" as to all periods of time elapsing prior to January 1, 1977, means interest at the rate of three per centum (3%) per annum compounded annually, and as to all periods of time elapsing from and after January 1, 1977, means interest at the rate of four per centum (4%) per annum compounded annually; provided, however, that this provision shall not alter or require recalculation of the amount of any annuity on which a monthly benefit payment was made prior to July 1, 1977.

[See Compact Edition, Volume 5 for text of 2.29 and 2.30]

Participation

Sec. 3.

[See Compact Edition, Volume 5 for text of 3.1]

2. Participation of Employees.

The membership of the System shall be composed as follows:

[See Compact Edition, Volume 5 for text of 3.2(a) and (b)]

(c) Any person, not a member of this System, who has been an employee of a participating subdivision

prior to the effective date of participation of such subdivision but who is not an employee of such participating subdivision on the effective date of participation of such subdivision, shall, if he again becomes an employee of such subdivision after the effective date of its participation become a member of the System upon the date he again becomes an employee, provided he is then under the age of sixty (60) or as to persons sixty (60) years or over, if such re-employment is within five (5) years after the effective date of the subdivision's participation, provided the extent of his prior service to such subdivision is equal to or in excess of the period by which his then attained age exceeds the age of sixty (60) years; and otherwise such person shall not be eligible to become a member of this System.

(d) Any person who has been a member of this System and whose membership has terminated by withdrawal, shall, if he again becomes an employee of a participating subdivision, become a member of the System upon the first day of the month following the date such person again becomes an employee if he is then under the age of sixty (60) years, but any such person who is then sixty (60) years or over shall not be eligible to become a member of the System.

[See Compact Edition, Volume 5 for text of 3.2(e)]

Revenue

Sec. 4. Member deposits.

[See Compact Edition, Volume 5 for text of 4.1(a) and (b)]

(c) The governing body of any subdivision having a participation date prior to January 1, 1978 by appropriate order or resolution, certified to the Board, may provide that earnings of the several employees of the subdivision in excess of the sum of Three Thousand Six Hundred Dollars (\$3,600) in any year, or earnings in excess of any other greater multiple of One Thousand Two Hundred Dollars (\$1,200) per year, shall be excluded in calculating the deposits and contributions to be made by reason of current service of its employee-members; and the amounts required to be paid in each month by the members as deposits shall not exceed deposits calculated on the basis of one-twelfth (1/12th) of the maximum annual earnings to be considered for retirement purposes as specified by such order or resolution. In like manner, the governing body may increase the amount of earnings on which such deposits and contributions shall be made.

[See Compact Edition, Volume 5 for text of 4.1(d) to (h)]

2. Subdivision Contributions.

(a) Each participating subdivision shall make benefit contributions to the System each month equal to

the amount paid to the System by all of its employees for the same payroll period. All such benefit contributions shall be credited to the subdivision's account in the Subdivision Accumulation Fund.

(b) Each participating subdivision shall make payment of the expense contribution to the System each month of the same amount as the contributions made to the Expense Fund by all of its employees for the same payroll periods.

(c) On or before the fifteenth day of each month, each participating subdivision shall remit or cause to be paid to the System at its office the amounts of the benefit contributions and expense contributions due for the preceding month as herein provided.

(d) Unless otherwise provided for and paid by a subdivision all contributions of the subdivision shall be paid out of the fund from which earnings are paid to the members or out of the General Fund of the subdivision.

Method of Financing

Sec. 5.

1. Funds of the System:

All the assets of the System shall be credited according to the purpose for which they are held to one (1) of six (6) funds, namely, the Employees Saving Fund, the Subdivision Accumulation Fund, the Current Service Annuity Reserve Fund, the Interest Fund, the Endowment Fund and the Expense Fund.

2. The Employees Saving Fund:

The Employees Saving Fund shall be a Fund in which shall be accumulated the deposits from the compensation of members plus current interest earnings. Contributions to and payments from the Employees Saving Fund shall be made as follows:

(a) Each participating subdivision shall cause to be deducted from the salary of each member, on each and every payroll of such employer for each and every payroll period, a sum of money equal to seven per centum (7%), six per centum (6%), five per centum (5%), or four per centum (4%) of his current-service earnings, as fixed by the governing body of the participating subdivision. In determining the amount earnable by a member in a payroll period, the Board 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 earnings for any period less than a full payroll period, if the employee was not a member on the first day of the payroll period, and to facilitate the making of deductions, it may modify the deduction required of any member for any payroll period by the amount of twenty-five cents (25¢) or less.

(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 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 employer shall certify to the Board 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) During the time that the United States is at war (as hereinabove defined) and for twelve (12) months thereafter, a member of the System (1) in the Armed Forces of the United States or their auxiliaries or in the Armed Forces Reserve of the United States and their auxiliaries or in the service of the American Red Cross, as a result of having volunteered or having been drafted or conscripted therein, or (2) in war work as a result of having been drafted or conscripted by governmental action into said war work, shall be permitted to deposit each year to the System a sum not to exceed the amount deposited by him to said System during the last year that he was employed as an employee under the provisions of this Act. The sum so deposited by such member and received by the System shall be deposited by said System in the Employees Saving Fund to the credit of the member's individual account and shall be treated in the same manner as funds deposited by the member while he was last employed as under the provisions of this Act. The subdivision by which such person was last employed shall make concurrent benefit contributions matching those so made by such member.

(d) Current interest on member's deposit shall be credited annually as of the thirty-first day of December and shall be allowed on the amount of the accumulated deposits standing to the credit of the member at the beginning of the year and shall not be allowed for parts of a year.

(e) Should a member cease to be an employee of a participating subdivision except by death or retirement under the provisions of this Act,

upon the filing of formal application therefor, such member's accumulated deposits shall be paid to him and his account in the Employees Saving Fund closed.

Following the automatic termination of membership in the System for those members who have been absent from service in all participating subdivisions more than sixty (60) consecutive months, the Employees Saving Fund account of such members shall cease to draw interest.

(f) Should a member die before retirement the amount of his accumulated deposits shall be paid as provided in Section VII of this Act.

(g) Upon the retirement of a member his accumulated deposits shall be transferred from the Employees Saving Fund to the Current Service Annuity Reserve Fund.

3. Subdivision Accumulation Fund:

The Subdivision Accumulation Fund shall be the Fund in which shall be accumulated all benefit contributions made to the Texas County and District Retirement System by the participating subdivisions and from which transfers and payments shall be made as below provided.

(a) The balances standing to the credit of each participating subdivision in its accumulation accounts in the System on December 31, 1977, after all other closing entries for such year have been made shall be credited to such subdivision's account in the Subdivision Accumulation Fund effective January 1, 1978. All benefit contributions thereafter payable by participating subdivisions shall be paid into the Subdivision Accumulation Fund and shall be credited to the accounts of the respective participating subdivisions in such Fund.

(b) Upon the retirement of a member, an amount equal to that proportion of his accumulated deposits in the Employees Saving Fund which the participating subdivision agreed on its participation date to provide as reserves for the Basic Annuity of the member shall be transferred from the Subdivision Accumulation Fund into the Current Service Annuity Reserve Fund. If the accumulated deposits of such retiring members have accumulated from deposits made while an employee of a single participating subdivision, such subdivision's account in the Subdivision Accumulation Fund shall be reduced by the amount so transferred. If such accumulated deposits arose from service in more than one participating subdivision, the accounts of the involved participating subdivisions in the Subdivision Accumulation Fund shall be reduced by the respective amounts chargeable to such participating subdivisions.

(c) All payments under prior service annuities heretofore granted and in force and all payments under Supplemental Annuities arising from credits granted by a participating subdivision shall be paid from this Fund and charged to such participating subdivision's account in this Fund subject to the following: The Board shall have the power to reduce proportionately all payments under such annuities at any time and for such period of time as is necessary so that the payments under such annuities in any year shall not exceed the amounts available in such participating subdivision's account in the Subdivision Accumulation Fund.

4. Current Service Annuity Reserve Fund:

The Current Service Annuity Reserve Fund shall be the Fund in which shall be held all reserves for current service annuities heretofore granted and in force and for all Basic Annuities hereafter granted, and from which shall be paid all such annuities and all benefits in lieu of such annuities, payable as provided in this Act. This Fund shall be made up of transfers as follows:

(a) At the time of service or disability retirement, the accumulated deposits of a retiring member shall be transferred from the Employees Saving Fund to the Current Service Annuity Reserve Fund as reserves for the Basic Annuity purchased by said member's deposits.

(b) An amount equal to that proportion of the accumulated deposits of each retiring member which the participating subdivision agreed on its participation date to provide at retirement, shall be transferred, upon such member's retirement, from the Subdivision Accumulation Fund as additional Basic Annuity reserves.

Transfers and payments from the Current Service Annuity Reserve Fund shall be made as provided in Section VII of this Act, upon the death, restoration to active service or removal from the disability list, of an annuitant retired on account of disability.

5. 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. Once each year on the thirty-first day of December, interest shall be allowed and transferred to the other Funds respectively. After interest-bearing funds have been duly credited with interest for the year in the manner provided by this Act, the Board annually shall transfer all excess earnings from the Interest Fund to one or another of the several special accounts of the Endowment Fund as in its judgment the needs and condition of the System may require.

6. Endowment Fund:

The Endowment Fund shall be a Fund in which shall be accumulated gifts, awards, funds and assets

accruing to the System which are not specifically required by other Funds established by this Act. The Endowment Fund shall consist of the following special accounts: the general reserves account; the distributive benefits account; the perpetual endowment account; and such other special accounts as the Board by resolution may establish.

(a) There shall be credited to the general reserves account all current interest allocable to the Endowment Fund, and there shall be transferred from the Interest Fund to said account such portion of the excess earnings, as in the judgment of the Board may be necessary: (1) to provide adequate reserves against insufficient future earnings on investments to allow regular interest on Funds entitled thereto under the provisions of this Act; (2) to provide adequate reserves against special and general contingency requirements of other funds of the System; and (3) to provide such amount, if available, as is required for the administrative expenses of the System in the ensuing year. The requirements of this account shall constitute a first charge against excess interest earnings standing to the credit of the Interest Fund at the end of any year. If in the judgment of the Board, the amount to the credit of the general reserves account is in excess of that needed to provide adequate reserves against insufficient earnings on investments, and special and general contingent requirements, then so much of any excess as remains as is required to pay administrative expenses for the ensuing year may be transferred to the Expense Fund.

(b) After the requirements of the general reserves account of this Fund have been satisfied, the Board may transfer any balance of excess earnings remaining in the Interest Fund at the end of a calendar year to a special account in the Endowment Fund to be denominated the "distributive benefits account." If in the judgment of the Board the amount to the credit of the distributive benefit account at the end of the year is sufficient to warrant such action, the Board may by resolution:

(1) authorize the distribution and payment of all or part of said amount as a distributive benefit to the persons who were annuitants of the System on the last day of said calendar year in the ratio that the monthly benefit of each such annuitant bears to the total of all annuity payments made by the System for the final month of such year.

(2) authorize the distribution and application of all or part of said amount as supplemental interest earned by, and to be paid and credited to the respective individual

accounts of members in the Employees Saving Fund, and to the respective accounts of participating subdivisions in the Subdivision Accumulation Fund, in proportion to the current interest allowed on individual accounts of members in the Employees Saving Fund and the regular interest allowed on accounts of participating subdivisions in the Subdivision Accumulation Fund. The supplemental interest shall be allowed on the Employees Saving Fund in the same manner that current interest is allowed on said Fund; and supplemental interest shall be allowed on the Subdivision Accumulation Fund in the same manner that regular interest is allowed on said Fund.

(c) The perpetual endowment account shall be the account in which there shall be deposited and kept such funds, gifts and awards as the grantors thereof may designate as a perpetual endowment for the System.

7. Expense Fund:

The Expense Fund shall be the Fund from which the expenses of administration and maintenance of the System shall be paid.

(a) The Director 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 Board for its review, amendment and adoption.

(b) The amount estimated to be required to meet the expenses of the System shall be paid from the general reserves account of the Endowment Fund to the extent available. The Board, as evidenced by a resolution of the Board recorded in its minutes, may transfer to the Expense Fund the amount required to cover the expenses as estimated for the year.

(c) If the amount estimated to be required to meet said expenses of the System is in excess of the amount in the general reserves account of the Endowment Fund which is available for administrative expenses, the Board, by a resolution recorded in its minutes, shall assess the estimated additional amount against and collect the same from the participating subdivisions and from members as Expense Fund contributions.

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 participating subdivision by order of its governing body may allow those persons who are members at the date of said order and who have terminated a previous membership in the System by withdrawal of then-accumulated deposits and who at date of such order have or thereafter accumulate at least twenty-four (24) consecutive months of creditable service with such subdivision since reestablishment of membership, to redeposit with the System in a single sum the accumulated deposits made as an employee of such subdivision, plus a withdrawal charge of five percent (5%) per annum from date of withdrawal to date of redeposit, and to provide that such member shall thereupon be entitled to restoration of all creditable service deriving from service performed by such member for such subdivision, which the member had at date of termination of the earlier membership.

Any such eligible member who makes the required deposits and pays the withdrawal charges above provided shall thereupon be entitled to restoration of all creditable service derived from service with such participating subdivision, which the member had at date of such previous 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 withdrawal charge shall be deposited in the Subdivision Accumulation Fund 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 Accumulation Fund shall be charged with the necessary reserves to fund any 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 Accumulation Fund, and would not impair the ability of the subdivision to provide for payment of Basic Annuities or Supplemental Annuities.

[See Compact Edition, Volume 5 for text of 6.6]

7. "Allocated Prior Service Credit" shall mean that percentage of the calculated "Maximum Prior Service Credit" of a member which is granted by the subdivision to the member, such percentage to be the same for all of the members of the subdivision and to be such that the total "Allocated Prior Service Credits" granted by the subdivision will not exceed

in the aggregate an amount for which the prospective benefit contributions of such subdivision will be adequate:

(a) to fund, within twenty-five (25) years from such subdivision's participation date, all obligations that are charges against its account in the Subdivision Accumulation Fund; and

(b) to provide the amount required according to this Act to be paid during such period under Supplemental Annuities arising from credits granted by such participating subdivision, and to provide such amounts as will be required to provide Basic Annuities in accordance with Paragraph b of Subsection 4 of Section V.

[See Compact Edition, Volume 5 for text of 6.8]

9. (a) "Current Service Credit" as used herein means an amount equivalent to a percentage (determined as hereinafter provided) of the deposits made to the System by a member during a given calendar year. Such percentage of deposits shall be the percentage agreed to by the subdivision on its participation date. For subdivisions participating on or after January 1, 1978, such percentage shall be 100%.

(b) "Accumulated Current Service Credit" shall mean the "current service credit" allowed a member for a given calendar year, accumulated at interest (as provided in this subsection) from the end of such year until the effective date of such member's retirement. Interest shall be allowed for each respective year of the accumulation period at the rate of interest allowed by the System on members' deposits for such year, but interest shall not be allowed for part of a year.

10. (a) "Multiple Matching Credit" shall mean an amount equivalent to a percentage (determined as hereinafter provided) of the deposits made to the System by a member during a given calendar year. Such percentage shall be 0% until some greater percentage is elected by the member's participating subdivision in accordance with the provisions of Subsection 11 of Section VI. The Multiple Matching Credit of a member shall include the excess, if any, of his Current Service Credit in force on January 1, 1978, over his Current Service Credit as defined in Paragraph (a) of Subsection 9 of this Section VI.

(b) "Accumulated Multiple Matching Credit" shall mean the Multiple Matching Credit allowed a member for a given calendar year, accumulated at interest (as provided in this subsection) from the end of such year until the effective date of such member's retirement. Interest shall be allowed for each respective year of the accumulation period at the rate of interest allowed by the System on members' deposits for such year, but interest shall not be allowed for part of a year.

11. (a) A participating subdivision may increase benefits theretofore granted, or credits upon which

future retirements will be allowed, or may adopt any additional coverage allowed by this Act, in the time and manner, and subject to the conditions set out in this section.

(b) A participating subdivision may provide for increase in such benefits or credits or may adopt additional coverage only after an actuarial valuation (as prescribed by Section 8, Section 4(e)) has been made as of December 31 valuation date which is co-terminal with, or subsequent to, completion of three or more years of participation from and after the later of the following dates, viz:

(1) the original date of participation by the subdivision involved; or

(2) the effective date of the latest preceding increase in benefits, or extension of coverage, allowed by such subdivision under this section.

(c) Any extension of coverage, or increase in benefits, may be made effective only on January 1 of a calendar year, and after the lapse of twelve months from the actuarial valuation date above mentioned.

(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 Multiple Matching Credits theretofore allowed and to be allowed thereafter with such increase to be a multiple of 10% of member deposits, provided that all Multiple Matching Credits theretofore allowed shall be further increased, if necessary, so that all Multiple Matching Credits are provided on the basis of the same percentage of member deposits;

(2) Increase in monthly benefit payments attributable to benefits payable from the Current Service Annuity Reserve Fund;

(3) Increase in Allocated Prior Service Credits theretofore granted and in effect;

(4) Increase in monthly benefit payments attributable to benefits payable from the Subdivision Accumulation Fund;

(5) 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 1 or 2 is not living at the date of death of the member; such member shall be considered to have elected Option 4A 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.

(6) 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.

(7) Granting the right of deferred service retirement, as that term is defined in Paragraph (5) 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 (7) unless such subdivision has previously granted or is currently granting the twenty-year deferred service benefits as described in Paragraph (5) above.

(8) 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.

(9) 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 and Multiple Matching 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 and Multiple Matching 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, and shall be deposited to its account in the Subdivision Accumulation Fund. 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.

(e) No increase in monthly benefit payments attributable to benefits payable from the Current Service Annuity Reserve Fund or from the Subdivision Accumulation Fund, Allocated Prior Service Credits, Current Service Credits, or Multiple Matching Credits theretofore allowed shall be permitted which would produce greater benefits for such completed service than would be provided for Current Service Credits and Multiple Matching Credits allowable for comparable current and future service.

(f) No such proposed increase in benefits or credits, or proposed extension of coverage shall be permitted if the result thereof (on the basis of calculations made by the actuary and approved by the Board) would impair the ability of the subdivision to fund within twenty-five (25) years from date of the December 31 valuation referred to in 11(b) above all obligations that are charges against its account in the Subdivision Accumulation Fund.

(g) No such increase in benefits or credits or proposed extension of coverage shall be permitted unless it is determined and certified by the actuary that the particular December 31 valuation date referred to in 11(b) above, all obligations of the subdivision then existing before any such increase, would be amortized on or before the 20th anniversary of said particular December 31 valuation date.

(h) No such increase in benefits or credits, or proposed extension of coverage shall be effective unless and until the proposal is approved by the Board as conforming to all of the requirements above.

[See Compact Edition, Volume 5 for text of 6.12]

13. Each subdivision having active members and annuitants who have had benefit credits calculated on a basis other than the member's full earnings may elect, effective January 1, 1978, or at the beginning of any subsequent calendar year, to have all such benefit credits of members not retired, and future payments of retirement benefits in force on the date of election recalculated on a full earnings basis, subject to the following conditions:

(a) Each member in the electing subdivision shall have his Maximum Prior Service Credit (or Maximum Special Prior Service Credit, if applicable) recalculated as the sum of:

(1) an amount determined in accordance with the provisions of Subsection 6 of Section VI (or Subsection 9(e) of Section X, if applicable) provided that such member's average prior service earnings for the purpose of such recalculation shall be as defined in Subsection 16 of Section II, except that actual earnings in excess of limits imposed by Subsections 16(a) and (b) of Section II shall not be excluded in determining such member's average prior service earnings; and

(2) an amount determined as two times the excess of (i) over (ii), discounted at regular interest from the date one year prior to the date of election to the subdivision's participation date, where (i) is the amount of accumulated deposits the member would have had one year prior to the date of election if in each calendar year since his date of membership in the System he had contributed on the basis of the deposit rate applicable at that time and his total earnings at that time, and (ii) is his actual accumulated deposits one year prior to the date of election.

(b) Each annuitant in the electing subdivision will have future payments of his monthly retirement benefit recalculated as the amount the annuitant would have been receiving as a monthly benefit on the date of election if at date of the member's retirement the monthly benefit had been calculated in accordance with the formula set out in the above Paragraph (a) of this subsection, except that the accumulated deposits used in the calculation shall be determined as of the member's retirement date.

(c) Each subdivision electing this option must also elect for its members to make deposits after the date of election on a full earnings basis.

(d) No such recalculation of benefit credits shall be permitted if it is determined by the actuary that such recalculation would impair the ability of the subdivision to fund all obligations that are charges against its account in the Subdivision Accumulation Fund within the twenty-five (25) year period specified in Subsection 11(g) above.

Benefits

Sec. 7.

1. Composition of Retirement Benefits.

Each retirement benefit shall be composed of a Basic Annuity as defined in Subsection 20 of Section II and a Supplemental Annuity as defined in Subsection 21 of Section II. The Basic Annuity shall be

payable from the Current Service Annuity Reserve Fund, and the Supplemental Annuity shall be payable from the Subdivision Accumulation Fund. All Supplemental Annuities shall be subject to reduction by the Board under the circumstances provided in Section V of this Act.

2. Service Retirement Eligibility.

(a) Any member, after one (1) year from the effective date of his membership, shall be eligible for service retirement who (1) shall have attained the age of sixty (60) years and shall have completed at least twelve (12) years of creditable service, or (2) shall have completed thirty (30) years of creditable service.

(b) Application for service retirement shall be made to the Board setting forth the date the member desires his retirement to become effective provided: (1) such application shall be executed and filed at least thirty (30) and not more than ninety (90) days prior to the date on which such retirement is to become effective; (2) the effective date specified in the application shall be the last day of a calendar month, and shall not be a date preceding the termination of the member's employment with an employing subdivision.

(c) With the provision that no retirement shall be effective within one (1) year after the effective date of his membership, each member shall be retired from employment by all subdivisions on the last day of the calendar year in which the age of seventy (70) is attained, or upon the last day of the calendar year in which he completes twelve (12) years of creditable service, whichever shall last occur; provided, however, that in exceptional cases and for substantial cause such retirement may be deferred by mutual consent of the member and the employing subdivision from year to year for a period of not to exceed one (1) year at any time.

(d) Any member who has accepted service retirement shall be ineligible and disqualified to resume or continue service in any participating subdivision.

3. (a) Standard Service Retirement Benefit.

A member who retires upon the basis of service eligibility shall be entitled to receive a "standard service retirement benefit" which shall be the actuarial equivalent of the sum of a member's accumulated deposits, Accumulated Current Service Credit, Accumulated Allocated Prior Service Credit, and Accumulated Multiple Matching Credit.

The standard service retirement benefit shall be payable during the life of the member, but with the provision that upon the member's death an amount equal to the excess, if any, of the member's accumulated deposits at time of retirement over the sum of

the "standard service retirement benefit" payments received by the member shall be paid to the member's estate unless he has directed such amount to be paid otherwise. Such excess shall be paid from the Current Service Annuity Reserve Fund and the Subdivision Accumulation Fund in the proportion that parts of the member's standard service retirement benefit that were payable from the respective funds bear to the whole benefit determined as of the effective date of retirement.

(b) Optional Service Retirement Benefits.

In lieu of the "standard service retirement benefit" allowable under Subsection 3(a) above, and provided that the member shall make such election and nomination within thirty (30) days after the date fixed for retirement, any member retiring for service may elect to receive the actuarial equivalent of his standard service retirement benefit as an optional service retirement benefit payable to the member during his lifetime, but with the provision that:

Option 1. Upon his death, the optional service retirement benefit shall be continued throughout the life of, and paid to, such person as the member shall nominate by written designation duly acknowledged and filed with the Board within the time above provided; or

Option 2. Upon his death, one-half of the optional service retirement benefit shall be continued throughout the life of, and paid to, such person as the member shall nominate by written designation duly acknowledged and filed with the Board within the time above provided; or

Option 3. In the event of his death before sixty (60) monthly payments have been made of the optional service retirement benefit, the payments shall be continued to such person as the member nominates by written designation (or if no such designated beneficiary survives the member, to the member's estate) until the remainder of the sixty (60) monthly payments have been made; or

Option 4A. In the event of his death before one hundred twenty (120) payments have been made of his optional service retirement benefit, the payments shall be continued to such person as the member nominates by written designation (or if no such designated beneficiary survives the member, to the member's estate) until the remainder of the one hundred twenty (120) monthly payments have been made; or

Option 5. Some other benefit or benefits may be paid either to the member or to such person or persons as he may nominate, provided the same shall be approved by the Board, and provided such other benefit or benefits, shall be certified by the actuary to be the actuarial equivalent of the standard service retirement

benefit to which the member is entitled at the effective date of his retirement.

Any member retiring for service who dies within thirty (30) days after the effective date of his retirement and who has not made an election to receive an optional service retirement benefit as herein provided shall be considered to have elected Option 4A above or, at the election of his beneficiary, such deceased member shall be considered as having been an active member at death and the beneficiary may thereby elect to receive the accumulated contributions of the deceased member.

4. Vesting. Deferred Service Retirement.

Any member who shall have accumulated at least twenty (20) years of creditable service may withdraw from service prior to the attainment of the age sixty (60) and shall become entitled to retirement with a Service Retirement Allowance upon his attainment of the age of sixty (60) years, or at his option at any date subsequent to his attainment of said age but not later than the date of his mandatory retirement as set out in paragraph (c) of subsection 2 of this Section VII provided that such member is then living and has not withdrawn his contributions and provided that such retirement may not be effective prior to one year after the effective date of his membership and will be effective only as of the last day of a calendar month and will be effective not less than thirty (30) days or more than (90) days subsequent to the execution and filing with the Retirement Board of written application therefor.

Any member who has accumulated thirty (30) or more years of creditable service shall have the right, until the date of his mandatory retirement as set out in paragraph (c) of subsection 2 of this Section VII, to remain in service and to file a written selection with the Retirement Board, in such form as the Retirement Board may prescribe, of an optional allowance and designated nominee, as provided for in subsection 3(b) of this Section, and in the event such member thereafter dies while in service he shall be considered to have retired effective as of the last day of the calendar month next preceding the month in which death occurs or as of the end of one year after the effective date of his membership whichever date shall occur last; and any such member who has filed such selection of optional allowance and designated nominee, may at his option from time to time, prior to retirement or death, file an amended written selection of optional allowance and designated nominee. Any such member who has accumulated thirty (30) or more years of creditable service who dies in service without having a written selection of optional allowance and designated nominee on file with the Retirement Board or whose designated nominee under such written selection of Option 1 or Option 2 of the options provided by subsection 3(b) of this Section VII last filed with the

Retirement Board is not living on the date of death of the member, shall be considered to have elected Option 4A above or, at the election of his beneficiary, such deceased member shall be considered as having been an active member at death and the beneficiary may thereby elect to receive the accumulated contributions of the deceased member.

5. Disability Retirement Eligibility:

With the provision that no retirement shall be effective within one (1) year after the effective date of membership, upon the application of a member or of his employer or his legal representative acting in his behalf, any member with less than twelve (12) years of creditable service may be retired by the Board, not less than thirty (30) and not more than ninety (90) days next following the date of filing of such application, on a disability retirement allowance, provided that the Medical Board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is the direct result of injuries sustained subsequent to the effective date of membership by external and violent means as a direct and proximate result of the performance of his duties, that such incapacity is likely to be permanent and that such member should be retired.

With the provision that no retirement shall be effective within one (1) year after the effective date of membership, upon the application of a member or of his employer or his legal representative acting in his behalf, any member with twelve (12) years or more of creditable service, who is not eligible for service retirement, may be retired by the Board, not less than thirty (30) and not more than ninety (90) days next following the date of filing of such application on a disability retirement allowance, provided that the Medical Board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

6. Standard Disability Retirement Benefits:

Upon retirement for disability a member shall receive a disability retirement benefit which shall be the actuarial equivalent of the sum of the member's accumulated deposits, Accumulated Current Service Credit, Accumulated Allocated Prior Service Credit and Accumulated Multiple Matching Credit.

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 benefit, 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.

(a) Should the Medical Board report and certify to the Board that such disability annuitant is no longer physically or mentally incapacitated for the performance of duty, or that such disability annuitant is engaged in or is able to engage in a gainful occupation, and should the Board by a majority vote concur in such report, then his allowance shall be discontinued.

(b) Should a disability annuitant under the age of sixty (60) years be restored to active service in a participating subdivision, his retirement allowance shall cease, he shall again become a member of the System, and any reserves on his Basic Annuity at that time in the Current Service Annuity Reserve Fund shall be transferred to the Employees Saving Fund and to the Subdivision Accumulation Fund, respectively, in proportion to the original sum transferred to the Current Service Annuity Reserve Fund at retirement. Upon restoration to membership, any Prior Service Certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement, he shall be credited with all his membership service. 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 sum of the Basic Annuity and Supplemental 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 and the Subdivision Accumulation Fund, in the proportion that parts of the disabled annuitant's disability retirement benefit that were payable from the respective funds bear to the whole benefit determined as of the effective date of retirement. Such payment shall be made to such annuitant if living; otherwise, such amount shall be paid to his estate unless he has directed such amount to be paid otherwise.

8. Return of Deposits Upon Other Terminations:

Should a member cease to be an employee of a participating subdivision except by death or retirement under the provisions of this Act, he shall, upon

application, be paid in full the amount of the accumulated deposits standing to the credit of his individual account in the Employees Saving Fund. In the event of death of a member before retirement, and prior to the accumulation of thirty (30) or more years of creditable service, the amount of his accumulated deposits standing to the credit of his individual account in the Employees Saving Fund shall be paid to his estate unless he has directed the account to be paid otherwise. Seven (7) years after cessation of service, if no previous demand has been made, any accumulated deposits of a contributor shall be returned to him or to his estate. If the contributor or the administrator of his estate cannot then be found, his accumulated deposits shall be escheated to the Retirement System, and shall be credited to the perpetual endowment account of the Endowment Fund.

9. Valuation Basis Adjustment in Current Service Annuities.

The Board of Trustees is authorized to increase the monthly benefits payable after July 1, 1977, on each current service annuity on which a monthly benefit payment was made on June 30, 1977. The monthly benefits payable may be increased by the percentage by which (a) exceeds (b), where (a) is the Current Service Annuity Reserve Fund balance as of July 1, 1977, plus regular interest on the mean balance of such fund from January 1, 1977, to July 1, 1977, and (b) is the System's current service annuity reserve calculated on the basis of four percent (4%) interest and such mortality and other tables adopted by the Board as may become effective on July 1, 1977.

10. Valuation Basis Adjustment in Prior Service Annuities.

The Board of Trustees is authorized to increase the monthly benefits payable after July 1, 1977, on each prior service annuity on which a monthly benefit payment was made on June 30, 1977. The monthly benefit payable may be increased for annuitants in each participating subdivision by the percentage by which (a) exceeds (b), where (a) is the subdivision's prior service reserve calculated on the basis of three percent (3%) interest and such mortality and other tables adopted by the Board as are in effect on June 30, 1977, and where (b) is the subdivision's prior service annuity reserve calculated on the basis of four percent (4%) interest and such mortality and other tables adopted by the Board as may become effective July 1, 1977. It is further provided that no increase in monthly benefits payable on prior service annuities for annuitants of a particular subdivision shall be made in an amount which (according to calculations made by the actuary on the basis of four percent (4%) interest and such mortality and other tables as are adopted by the Board) would

result in a probable future depletion of the subdivision's account in the Subdivision Prior Service Accumulation Fund with the resulting need to reduce prior service annuities payable to retired members.

Administration

Sec. 8.

[See Compact Edition, Volume 5 for text of 8.1]

1a. The Board of Trustees of the Texas County and District Retirement System is subject to the Texas Sunset Act,¹ but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1989 and of every 12th year after 1989 are reviewed.

2. The Board shall have, in addition to all other powers and duties arising out of this Act not otherwise specifically reserved or delegated to others, the following specific powers and duties and is hereby authorized and directed to:

(a) Hold regular meetings in March, June, September and December of each year, and such special meetings at such other times as may be called by the Director upon written notice to the trustees. Five (5) days notice of each special meeting shall be given to each trustee, unless such notice is waived. All meetings of the Board shall be open to the public and shall be held in the offices of the Board or in any other place specifically designated in the notice of any meeting.

(b) Consider and pass on all applications for annuities and benefits, authorize the granting of all annuities and benefits and suspend any payment or payments, all in accordance with the provisions of this Act.

(c) Certify the current rate of interest as approved in writing by the actuary and notify all participating subdivisions thereof.

(d) Obtain such information from any member or from any participating subdivision as shall be necessary for the proper operation of the System.

(e) Establish an office in the Capital City or in one of the participating subdivisions. All books and records of the System shall be kept in such office.

(f) Appoint a Director for the purpose of managing this System, investing the Funds and carrying out the administrative duties of the System. The Board shall also appoint an actuary for the purpose of carrying out all the necessary actuarial requirements of the System; appoint an attorney; appoint a Medical Board; and employ such additional actuarial, clerical, legal, medical and other assistants as shall be

required for the efficient administration of the System; and determine and fix the compensation to be paid.

(g) Have the accounts of the System audited at least annually by a Certified Public Accountant.

(h) Submit an annual statement to the governing body of each subdivision and to any member, upon request, as soon after the end of each calendar year as possible. Such statement shall include at least the following: a balance sheet showing the financial and actuarial condition of the System as of the end of the calendar year; a statement of receipts and disbursements during each year; a statement showing changes in the asset, liability, reserve and surplus accounts during the year; and such additional statistics as are deemed necessary for a proper interpretation of the condition of the System.

(i) The Board annually on December 31 shall allow regular interest on the mean amount in the Current Service Annuity Reserve Fund for the year then ending and shall allow regular interest on the amount in the Subdivision Accumulation Fund at the beginning of such year and shall allow current interest as defined in Section II of this Act on the amount in the Endowment Fund at the beginning of such year and on an amount in the Employees Saving Fund equal to the sum of the accumulated deposits standing to the credit at the beginning of such year of all members included in the membership of the System on December 31 of such year, before any transfers for retirement effective December 31 of such year are made. The amounts so allowed shall be due and payable to said funds and shall be credited thereto by the Board on December 31 of each year from the moneys of the System held in the Interest Fund, provided that current interest shall not be at a rate greater than regular interest and that any excess earnings over such amount required shall be paid to one or another of the several accounts of the Endowment Fund as provided in Section V of this Act.

(j) Accept any gift, grant or bequest of any money or securities for the purposes designated by the grantor, if such purposes are specified as providing an endowment or retirement benefits to some or all of the participating employees or annuitants of this System, or if no such purposes are designated, for deposit to the credit of the Endowment Fund.

(k) Determine the limitations on the amounts of cash to be invested in order to maintain such cash balances as may be deemed advisable to meet payments of benefits and expenses, and invest the remaining available cash in securities

in accordance with Subsection (7) of this Section.

(l) Keep in convenient form such data as shall be necessary for all required calculations and valuations as required by the actuary and keep a permanent record of all the proceedings of the Board.

(m) The Board shall have power to incur indebtedness and to borrow money upon the faith and credit of the System for the purpose of paying and providing for the payment of the expenses incident to the operation of the System, and to renew, extend or refund such indebtedness heretofore incurred or hereafter incurred, and for such purposes to issue and sell the negotiable promissory notes or negotiable bonds of the System, maturing within twenty (20) years from date of issuance, and bearing interest at a rate not to exceed six percent (6%) per annum; and such notes or bonds shall be a charge against and shall be payable from the Expense Fund of the System, hereinabove provided for, but shall expressly provide that the same shall never be held or considered to be an obligation of the State of Texas; but the total indebtedness against the Expense Fund of the System shall never exceed at any one time the sum of One Hundred Thousand Dollars (\$100,000).

(n) Establish such rules and regulations not inconsistent with the provisions of the Act and generally carry on such other reasonable activities as are deemed necessary or desirable for the efficient administration of the System.

[See Compact Edition, Volume 5 for text of 8.3 to 8.9]

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 9]

Merger of Existing County Systems

Sec. 10.

[See Compact Edition, Volume 5 for text of 10.1 to 10.4]

5. All persons who conform to the definition of "employee" as set out in Subsection 6 of Section II, but who were not eligible for membership in the local system as established, and are not members of the local system at the date of merger, shall become members of the state system under the merger agreement, unless such person executes a waiver of membership in the time and manner prescribed below: provided, however, that no employee who is sixty (60) years of age or more at date of merger shall be eligible for membership unless his service to such subdivision prior to the date of merger is equal to or is in excess of the period by which his then attained age exceeds the age of sixty (60) years.

Any person who becomes a member of the state system as of the date of merger under this Subsection 5 shall not be allowed any credit for service prior thereto except upon the following conditions:

If, for all months during which such person performed service as an employee (as defined in subsection 6, Section II, above) of the subdivision between the time the local system was established and the date of merger, such person shall pay to the state system (within 90 days after date of merger) a sum equal to the deposits which a member of the local system drawing the same compensation during the same period was required to make to the local system, and if the subdivision pursuant to the merger agreement contributes to the state system within the 90-day period an equal amount, then in such event:

(a) the sum so deposited by such member with the state system shall be deposited by it to the credit of such member's individual account in the Employees Saving Fund and shall be treated in the same manner as provided in subsection 9(a) below as to transfer upon merger of individual deposits of members of the local system;

(b) the sum so deposited by the subdivision shall be received and deposited in the subdivision's account in the Subdivision Accumulation Fund in the manner provided in subsection 9(c) below; and

(c) such member shall thereupon receive credit for all service to the subdivision antedating the effective date of merger.

Any person not a member of the local system, but who would become a member of the state system under the terms of this subsection may elect not to become a member if within thirty (30) days after the effective date of the merger agreement, he shall execute and file with the Director of the state system a written waiver of membership in such form as the Board may prescribe. Any such person who files such a waiver of membership may apply for membership in the state system as of the first day of any month thereafter, if the person would then be eligible for membership in the system as a beginning employee of the subdivision, and such person may thereupon become a member of the system but without credit for any service antedating date of membership.

[See Compact Edition, Volume 5 for text of 10.6 to 10.8]

9. Upon merger, the total assets of the local system shall be transferred to the state system, valued as provided in Subsection 8 above, and such assets shall be credited as follows:

(a) An amount equal to the sum of the accumulated deposits of the individual members of

the local system will be credited to the Employees Saving Fund of the state system. The state system will establish individual accounts for all such members and will credit to such individual accounts the respective accumulated deposits of the individual members as of the effective date of merger. No current service credits shall accrue in this System to the members of the local system on account of the accumulated deposits so transferred and credited upon merger.

(b) An amount equal to the required annuity reserve, based on such annuity tables as shall be adopted by the Board with regular interest, for current service annuities in effect in the local system as of the date of merger shall be credited to the Current Service Annuity Reserve Fund of this System and such current service annuities shall thereafter be obligations of and paid from the Current Service Annuity Reserve Fund of this System.

(c) The remaining assets of the local system will be credited to the subdivision's account in the Subdivision Accumulation Fund of the state system for the partial funding of the obligations assigned to such account in accordance with this Act.

(d) Each member transferred under the merger, and each person who becomes a member at the date of merger and qualifies for creditable service antedating merger as provided by Subsection 5 above, will be given an "allocated special prior service credit" determined as provided in paragraphs (e) and (f) following.

(e) "Maximum Special Prior Service Credit," as used in this Section shall mean an amount equivalent to the accumulation at interest of a series of monthly payments for the number of months of all creditable service allowed to the member pursuant to the merger agreement for service to the date of merger, each such monthly payment being equal to twice the subdivision's initial deposit rate multiplied by the member's "average local system earnings," with such accumulation then being reduced by an amount equal to the individual member's accumulated deposits transferred on merger or paid in by the member in accordance with Subsection 5 of this Section. 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 allowed for parts of a year.

"Average local system earnings" as used in this subsection means the average monthly earnings received by an employee for service rendered to the local system subdivision during

the thirty-six (36) months immediately preceding the effective date of merger of such subdivision's local system into the System, or if there be less than thirty-six (36) months of such service, the average shall be computed for the number of months of such service within such thirty-six (36) months period, or if there be no such service during said thirty-six (36) months, the average shall be computed for the number of months of service rendered to the local system subdivision during the twenty-four (24) months immediately preceding said thirty-six (36) months; provided however, that in calculating the "average local system earnings" of any employee, actual earnings in any month shall be excluded to the extent that they exceed the lower of the following rates of earnings: (i) the annual earnings prescribed by the governing body at the time of merger as the maximum current service earnings for current service deposits and contributions; or (ii) annual earnings in excess of Twelve Thousand Dollars (\$12,000.00) per annum.

(f) "Allocated Special Prior Service Credit" as used in this section and in merger agreements thereunder shall mean that percentage of the calculated "Maximum Special Prior Service Credit" of a member which is granted by the subdivision to the member, such percentage, except as hereinafter provided in this paragraph, to be the same for all of the members of the subdivision and to be such that the total "Allocated Special Prior Service Credits" granted by the subdivision will not exceed in the aggregate an amount for which the assets credited to the Subdivision Accumulation Fund on merger and the prospective benefit contributions of such subdivision will be adequate:

(i) to fund, within twenty-five (25) years from such subdivision's participation date, all obligations that are charges against its account in the Subdivision Accumulation Fund; and

(ii) an amount for which the prospective benefit contributions of such subdivision will be adequate to provide the amount required according to this Act to be paid during such period under Supplemental Annuities arising from credits granted by such participating subdivision, and to provide such amounts as will be required to provide Basic Annuities in accordance with paragraph (b) of Subsection 4 of Section V.

[See Compact Edition, Volume 5 for text of 10.10 and 10.11]

12. From and after date of merger, the rights and obligations of the employing subdivision and of persons who as its employees or pursuant to the

merger agreement become members of the state system shall be governed by the provisions of Sections I through IX of this Act, except as modified by the terms of the merger agreement and by the provisions of this Section; and provided, as to local systems which have been merged into the state system prior to December 31, 1977, that the balances standing to the credit of the participating subdivision in its accumulation accounts in the System on December 31, 1977, after all other closing entries for such year have been made, shall be credited to such subdivision's account in the Subdivision Accumulation Fund effective January 1, 1978.

[See *Compact Edition, Volume 5 for text of 11*]

Optional Coverage of Employees Receiving Supplemental Compensation From Participating Counties

Sec. 11A.

[See *Compact Edition, Volume 5 for text of 11A.1*]

2. All persons who on the effective date specified in the order are within the class designated to be included in the System by the order of the governing body of any participating subdivision under this section, shall become members of the System at the effective date specified in the order unless the person executes a waiver of membership in the time and manner prescribed below. Any person thereafter employed for the first time by the subdivision in any covered employment shall become a member of the System at the date of his employment if he is at that date less than sixty (60) years of age.

[See *Compact Edition, Volume 5 for text of 11A.3 to 11A.5*]

6. Any person who becomes a member of the System by virtue of this section as an employee of a county which prior to its participation in this System operated and maintained a "local system" (as defined in Section 10) that was merged into this System pursuant to Section 10 shall not be allowed credit for service rendered the subdivision prior to the effective date of the merger, except upon the following conditions:

(a) The member and the subdivision make the deposits in the amounts and within the time prescribed by Subsection 4, above, to entitle the member to current service credit as provided in Subsection 4; and

(b) For all months during which the person performed service as an employee (as defined in Subsection 6, Section 2) of the subdivision between the time the local system was established and the date of merger, the person shall pay to the State system (within ninety (90) days after the effective date specified in the order of the governing body adopted under this section) a sum equal to the deposits which a member of the local system drawing the same compensation during the same period was required to

make to the local system, and the subdivision shall contribute to the State system within said ninety (90) day period an equal amount to match the members' deposits.

In the event the deposits required under this subsection are made within the time specified, the sum so deposited by the member with the State system shall be deposited by it to the credit of the member's individual account in the Employees Saving Fund and shall be treated in the same manner as provided in Subsection 9(a) of Section 10, as to the transfer upon merger of individual deposits of members of the local system; the sum so deposited by the subdivision shall be received and deposited in the subdivision's account in the Subdivision Accumulation Fund in the manner provided in Subsection 9(c) of Section 10; and the member shall receive credit for all service to the subdivision antedating the effective date of merger, and will be given an "Allocated Special Prior Service Credit" determined in the same manner and on the same percentages of Maximum Special Prior Service Credit as was used in determining the Allocated Special Prior Service Credit of employees of the county who became members of the State system at the effective date of merger.

Miscellaneous

Sec. 12.

[See *Compact Edition, Volume 5 for text of 12.1 and 12.2*]

3. All annuities and other benefits payable under the provisions of this Act and all accumulated deposits of members in this System shall be exempt from all state, county or municipal taxes, shall be unassignable and shall not be subject to execution, garnishment or attachment.

[See *Compact Edition, Volume 5 for text of 12.4 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; Acts 1977, 65th Leg., p. 1856, ch. 735, § 2.176, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1920, ch. 770, §§ 1 to 17, eff. Jan. 1, 1978; Acts 1977, 65th Leg., p. 1942, ch. 771, §§ 1 to 6, eff. June 16, 1977.]

Sections 18 and 19 of Acts 1977, 65th Leg., p. 1941, ch. 770, provided: "Sec. 18. This Act shall take effect and be in force on and after January 1, 1978."

"Sec. 19. 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."

Section 7 of Acts 1977, 65th Leg., p. 1945, ch. 771, 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. 6228i. Repealed by Acts 1977, 65th Leg., p. 1410, ch. 570, § 9, eff. Jan. 1, 1978

The repealed article, relating to proportionate service retirement, disability and death benefits, was derived from Acts 1973, 63rd Leg., p. 1587, ch. 573, as amended by Acts 1975, 64th Leg., p. 221, ch. 81, § 1.

See, now, art. 6228k.

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]."

Art. 6228k. Fractional Service Retirement Benefits

Definitions

Sec. 1. In this Act:

- (1) "Statewide retirement system" means
 - (A) the Teacher Retirement System of Texas,
 - (B) the Employees Retirement System of Texas,
 - (C) the Judicial Retirement System of Texas,
 - (D) the Texas Municipal Retirement System,
 - and
 - (E) the Texas County and District Retirement System.

(2) "Creditable service" means service earned or allowed in satisfaction of length-of-service requirements prescribed for eligibility for service retirement by the act governing the system in which such service is credited.

(3) "Combined creditable service" means the total of the person's creditable service in only those statewide retirement systems for which the length-of-service requirements for service retirement would be

satisfied by such total creditable service at the person's attained age. Service which, due to length-of-service requirements in the system in which it was earned, does not qualify as combined creditable service in that system shall be excluded in determining combined creditable service in other statewide retirement systems. Creditable service earned with or allowed by more than one statewide retirement system for the same period of time shall be counted only once in determining the amount of a person's combined creditable service. Creditable service earned with or allowed by a subdivision or municipality electing not to participate in the program established by this Act may not be considered in determining combined creditable service.

Membership

Sec. 2. Membership in a statewide retirement system does not terminate for absence from employment covered by that system during a period for which the member is allowed creditable service in an employment covered by another statewide retirement system. For the purpose of membership terminations only, absence from employment for those whose membership in a statewide retirement system is continued by this section shall be calculated from the last date of employment covered by any statewide retirement system. A member may continue membership in a particular system after he or she is absent from service with all systems if, according to the laws governing that system, he or she would be eligible to continue membership, assuming his or her creditable service maintained in all statewide retirement systems had all been earned with that system. In this section "employment covered by another statewide retirement system" does not include employment by a subdivision or municipality which is not participating.

Fractional Benefits

Sec. 3. (a) Combined creditable service applies only to determine eligibility for service retirement, and not to determine eligibility for disability retirement, death benefits, or any other eligibility requirements, except eligibility for service retirement, prescribed by the laws governing any statewide retirement system. A person having service in a statewide retirement system may use his or her combined creditable service only to satisfy the length-of-service requirements of that system for service retirement.

(b) Any person who has membership in two or more statewide retirement systems shall have his or her eligibility for service retirement benefits from any of the systems determined by the laws governing that system but, for the purpose of determining whether the member satisfies length-of-service requirements defining eligibility for but not amount of benefits, as if his or her combined creditable service were all creditable service with that system.

(c) The amount of the benefit payable by any statewide retirement system shall be computed according to and in the manner prescribed by the laws governing that system and based solely on the member's credits in that system and on service credits earned with or allowed by that system.

(d) A person receiving service retirement or lifetime disability benefits from one or more statewide retirement systems may rely on the provisions of this Act to qualify for subsequent service retirement under any other statewide retirement system in which he or she has rendered creditable service, either if he or she was not eligible to retire under the latter system at the time of any previous service retirement or qualification for lifetime disability benefits from a statewide retirement system or if his or her previous retirement did not rely on combined creditable service.

(e) Retirement annuity minimums which do not vary in amount directly with the amount of creditable service of a member, postretirement fixed lump-sum death benefits, and survivor benefits payable to beneficiaries of retirees of the Teacher Retirement System of Texas, when paid to or on behalf of a person who has relied on this section to qualify for benefits from at least one statewide retirement system, shall be calculated as a percentage of the normal benefit payable had the member retired only in that system. The percentage applied shall be equal to the amount of creditable service actually granted for employment covered by that system divided by the amount of creditable service in that system which would have been required for the member to have been granted a service retirement without benefit of this Act, such percentage not to exceed 100 percent.

(f) The beneficiary of a person receiving service retirement benefits from more than one statewide retirement system which also provides death benefits for its retirees is entitled to such death benefits from each system calculated as provided in Subsection (e) of this section if the retiree has relied on this section to qualify for benefits from at least one of the systems.

Election of Participation

Sec. 4. (a) Each participating subdivision of the Texas County and District Retirement System and each participating municipality in the Texas Municipal Retirement System as of January 1, 1978, may elect whether to participate in the program of fractional benefits established in this Act. The election shall be made by vote of the governing body of the particular subdivision or municipality in the same manner as other such actions of the governing body and shall be effective on February 1, 1978. Notice of an election made as provided in this section must be received by the board of trustees of the Texas County and District Retirement System or the Texas

Municipal Retirement System, as appropriate, before February 1, 1978. Failure to notify the system board of trustees of an election prior to February 1, 1978, waives the right of election and the participating subdivision or municipality failing to notify automatically becomes a participant in the program on February 1, 1978.

(b) A subdivision or municipality electing not to participate in the program established in this Act may subsequently elect to participate. The effective date of participation by a subdivision or municipality is the first day of the month after the date of receipt by the appropriate board of trustees of notice of an election.

(c) Each subdivision or municipality electing to begin participation in either system after January 31, 1978, simultaneously becomes a participant in the program established in this Act by virtue of the election.

(d) Participation in the program established in this Act applies to all employees and former employees of the participating subdivision or municipality who are included in the membership of the retirement system as provided by law on or after the effective date of participation by the participating subdivision or municipality in the program established in this Act.

Special Provisions

Sec. 5. (a) Any member who, on or before December 31, 1977, has met the length-of-service requirements under the terms of laws in effect on that date governing the Employees Retirement System of Texas, the Teacher Retirement System of Texas, and the Judicial Retirement System of Texas may retire from the service used in satisfaction of those requirements on meeting the age requirements in effect on December 31, 1977.

(b) The Board of Trustees of the Employees Retirement System of Texas may, by rule or regulation:

(1) consider the classes of service under the terms of Chapter 352, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), as if they were classes in separate systems under the terms of this Act;

(2) permit a member who retires with 10 or more years' service credit in the Employees Retirement System of Texas, exclusive of military service credit, to receive retirement benefits as an elective state official for such percentage of his eligible military service as is derived by dividing the number of months actually served as an elective state official by 96 months, but not more than 100 percent;

(3) permit persons who are retiring exclusively from programs administered by the board to use the shortest vesting period required for any class of service in which the member has retirement credit in such programs.

Administration

Sec. 6. Each board of trustees of a statewide retirement system may adopt such rules as are necessary to implement the provisions of this Act. Each system shall determine the eligibility of its members for benefits, including whether sufficient combined creditable service exists to qualify the member for benefits under this Act, and the amount and duration of benefits payable by that system under this Act pursuant to the respective laws governing each system. Each statewide retirement system shall cooperate with the other statewide retirement systems in the implementation of this Act. The Employees Retirement System of Texas, not later than December 15th of each even-numbered year, shall report to the governor and the Legislative Budget Board on the current and long-range fiscal and actuarial effects of this Act on that system and shall include in its biennial budget estimates a reasonable amount for reimbursement of expenses incurred by it in the performance of duties required of the system by this Act.

Confidentiality of Records

Sec. 7. Records of all individual members and beneficiaries in the custody of statewide retirement systems are personnel records and are deemed to be confidential information under the provisions of Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes), except that information in the records may be transferred between statewide retirement systems to the extent necessary to administer the Act.

Statutory Construction

Sec. 8. The provisions of this Act which conflict with any other statutory provisions governing each statewide retirement system shall be considered as exceptions which shall prevail over such laws only as explicitly provided in this Act and shall be construed strictly as against those statutory provisions. It is the legislative intent of this Act to implement the authority granted the legislature in Article XVI, Section 67, of the Texas Constitution, to provide a system of fractional benefits to qualified members of more than one statewide retirement system. It is contrary to the legislative intent of this Act for any person or class of persons to receive by virtue of this service in more than one statewide retirement system a proportionately greater benefit from a particular statewide retirement system than persons who have rendered faithful career service under that statewide retirement system only. The provisions of

this Act do not in any respect repeal the provisions of Chapter 75, Acts of the 54th Legislature, 1955, as amended (Article 6228a-2, Vernon's Texas Civil Statutes).

Repealer

Sec. 9. Chapter 573, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6228i, Vernon's Texas Civil Statutes), is repealed.

Effective Date

Sec. 10. This Act takes effect January 1, 1978. [Acts 1977, 65th Leg., p. 1407, ch. 570, §§ 1 to 10, eff. Jan. 1, 1978.]

Art. 6228l. Audits, Reports, and Actuarial Studies of Certain Retirement Systems

Sec. 1. In this Act, "public retirement system" means a continuing, organized program of service retirement, disability retirement, or death benefits for officers or employees of the state or a political subdivision. The term does not include, however, the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Judicial Retirement System of Texas, the Texas Municipal Retirement System, the Texas County and District Retirement System, an optional retirement program for officers or employees of institutions of higher education, a retirement program for which the only funding agency is a life insurance company, a program providing only workmen's compensation benefits, or a program administered by the federal government.

Sec. 2. The governing body of a public retirement system shall employ an actuary, as a full- or part-time employee or as a consultant, to make a valuation of the assets and liabilities of the system on the basis of assumptions and methods that are reasonable in the aggregate, taking into account the experience of the plan and reasonable expectations, and which, in combination, offer the actuary's best estimate of anticipated experience under the plan. The first valuation shall be done within a one-year period beginning January 1, 1978, and subsequent valuations shall be done not less frequently than once every three years. Based on this valuation, the actuary shall make recommendations to insure the actuarial soundness of the system. The actuary employed by the system must be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries or an enrolled actuary under the federal Employee Retirement Income Security Act of 1974.¹

Sec. 3. The governing body of a public retirement system shall have the accounts of the system audited at least annually by a certified public accountant.

Sec. 4. The governing body of a public retirement system shall publish an annual report showing the financial condition of the system as of the last day of the 12-month period covered in the report, and including a statement of receipts and disbursements during the 12-month period, a statement showing changes in various accounts within the system during the 12-month period, and a statement showing any investments of the system existing on the last day of the 12-month period. This annual report shall also show the actuarial condition of the system based on the most recent actuarial valuation of the system.

[Acts 1977, 65th Leg., p. 1456, ch. 594, §§ 1 to 4, eff. Aug. 29, 1977.]

¹ Generally, 29 U.S.C.A. § 1001 et seq.

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, fireman, 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 privileg-

es 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 month-

ly 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]

Application of Sunset Act

Sec. 19A. The office of Firemen's Pension Commissioner is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished, and this Act expires September 1, 1987.

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 20 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; Acts 1977, 65th Leg., p. 1851, ch. 735, § 2.137, eff. Aug. 29, 1977.]

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 multi-

pled 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 compensation 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 eligible 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 vacated 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 pro-

vided 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 United 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. 6243e.3. Volunteer Fire Fighters' Relief and Retirement Fund

Definitions

Sec. 1. In this Act:

(1) "Qualified service" means fire-fighting service rendered without monetary remuneration while a member in good standing of a fire-fighting unit that has no fewer than 10 active members, and a minimum of two drills each month, each drill two hours long, and each active member present at 60 percent of the drills and 25 percent of the fires, or fire-fighting service rendered without monetary remuneration while a member of a fire-fighting unit which includes paid fire fighters. Absence caused by military duty does not affect qualified service.

(2) "Retirement age" means age 55.

(3) "Dependent" means dependent as defined by the U. S. Internal Revenue Code, Subtitle A, Chap-

ter 1B, Part V, Section 152, and any subsequent amendments.¹

(4) "Solvent" means sufficient assets on hand to meet all current benefits due.

(5) "Qualified actuary" means a fellow of the Society of Actuaries or a member of the American Academy of Actuaries, or both, who has at least five years of experience with public retirement systems.

(6) "Actuarially sound pension system" means a system in which the amount of contributions is sufficient to cover the normal cost and 40-year amortization of the unfunded prior-service cost (such normal cost and prior-service cost to be determined by a qualified actuary and based on assumptions adopted by the state board of trustees and approved by the actuary in regard to future contribution levels, mortality, retirement age, turnover, and morbidity) where:

(A) the normal cost is the annual cost of the members' benefits assigned to the years after date of entry;

(B) the unfunded prior-service cost is equal to the prior-service cost reduced by the assets; and

(C) the prior-service cost determined as of the date of the actuarial valuation is equal to:

(i) the present value of future benefits on behalf of all individuals receiving benefits;

(ii) the present value of future benefits on behalf of all individuals who have terminated their service with vested benefits to commence at a future date; and

(iii) the present value of future benefits accrued to the date of valuation on behalf of all individuals in active service.

(7) "Fund" means the Fire Fighters' Relief and Retirement Fund created by this Act.

(8) "Pension system" means the system of contributions and benefits created by this Act.

(9) "Member fire fighter" means a fire fighter who participates in the pension system under this Act.

(10) "Member fire department" means a fire department that participates in the pension system under this Act.

(11) "Current pension plan" means a pension plan in which a fire department is participating when it elects to join the pension system created by this Act.

(12) "Commissioner" means the Firemen's Pension Commissioner authorized by Section 19, Chapter 125, Acts of the 45th Legislature, Regular Session, 1937 (Article 6243e, Vernon's Texas Civil Statutes).

(13) "Governing body" means the governing body of any political subdivision of the state within which a rural fire prevention district created pursuant to the provisions of Chapter 57, Acts of the 55th Legislature, Regular Session, 1957 (Article 2351a-6, Ver-

non's Texas Civil Statutes), is situated or the governing body of any city or town within which a fire department subject to the provisions of this Act is situated.

¹ 26 U.S.C.A. § 152.

Fire Fighters' Relief and Retirement Fund

Sec. 2. (a) A Fire Fighters' Relief and Retirement Fund is created.

(b) Participation in the fund is optional. Any governing body may, not later than 60 days after the effective date of this Act and in accordance with the usual procedures prescribed for other official actions of the governing body, elect to exempt itself from the requirements of this Act. Any action to provide for an exemption from the requirements of this Act may be rescinded by the governing body at any time.

(c) Every governing body shall contribute for each fire fighter at least \$12 for each month of qualified service beginning on the date the fire fighter enters the pension system. Contributions must be paid at least every six months. If the member fire department is situated in more than one political subdivision, the governing bodies of such political subdivisions shall contribute equally towards a total of at least \$12 for each fire fighter for each month of qualified service.

(d) The state shall contribute the sum necessary to make the fund actuarially sound each year. The state's contribution may not exceed the amount of one-third of the total of all contributions by governing bodies in one year. If the state contributes one-third of the total contributions of the governing bodies in one year, the fund shall be presumed actuarially sound.

(e) The commissioner may receive contributions to the fund from any source.

(f) Any contribution made and any benefits provided pursuant to this Act shall not be considered compensation, and member fire fighters shall not be deemed to be in the paid service of any governing body.

Retirement Benefits

Sec. 3. (a) A member fire fighter shall receive a retirement annuity payable in monthly installments on reaching retirement age, subject to the vesting provisions in Section 6 of this Act.

(b) The monthly retirement annuity is equal to three times the governing body's average monthly contribution over the member fire fighter's term of qualified service under this Act.

(c) For each year of additional qualified service in excess of 15 years, a member fire fighter is entitled to receive an additional seven percent of his monthly pension compounded annually. A fire fighter may

receive a proportional credit for days or months of qualified service that make up less than a year.

Disability Benefits

Sec. 4. (a) A member fire fighter must elect between retirement or disability benefits if eligible for both.

(b) A member fire fighter who is totally disabled and cannot perform duties as a member of the fire department shall receive a weekly disability allowance throughout the term of such disability.

(c) The standard monthly disability allowance is three times the governing body's monthly contribution at the date of the fire fighter's disability.

(d) A member fire fighter whose disability results from performing duties as a fire fighter is guaranteed a disability benefit of at least \$250 a month.

Death Benefits

Sec. 5. (a) The beneficiary of a deceased member fire fighter shall receive a lump-sum benefit that is the greater of:

(1) the sum contributed to the fund on the decedent's behalf; or

(2) the sum which would have been contributed on the decedent's behalf from whatever source at the end of 15 years of qualified service.

(b) The beneficiary of a member whose death results from performing duties as a fire fighter is guaranteed a lump-sum benefit of at least \$5,000.

(c) In addition to the lump-sum death benefit, the spouse and dependents shall receive in equal shares a survivor's benefit equal to two-thirds of the disability benefit the decedent would have received at date of death. As long as both spouse and one or more dependents survive, an additional one-third of the disability benefit the decedent would have received at date of death shall be paid to the dependents in equal shares.

(d) If a member fire fighter dies after retirement, the surviving spouse shall receive two-thirds of the monthly pension the decedent was receiving at the time of death.

(e) The spouse is eligible to receive benefits as long as the spouse is unmarried.

(f) Lump-sum death benefits are subject to the laws of descent and distribution if the decedent has not provided for testamentary disposition.

(g) When a fire fighter names more than one beneficiary for the lump-sum death benefit, the benefit shall be divided equally among the named beneficiaries unless the fire fighter designates a proportional division. If the fire fighter designates a proportional division, each beneficiary shall receive the proportion of the lump-sum benefit designated by the fire fighter.

Vesting of Benefits

Sec. 6. (a) No right to retirement benefits vests until five years of qualified service are completed.

(b) Vested retirement benefits are nonforfeitable.

(c) Full retirement benefits vest at the following rates:

- (1) 25 percent after the first five years of qualified service;
- (2) five percent a year for the next five years of qualified service; and
- (3) 10 percent a year for the 11th through the 15th year of qualified service.

Member Claim and Appeal Procedure

Sec. 7. (a) Claims for benefits are filed with the local board of trustees.

(b) On receiving a claim for benefits, the local board of trustees shall hold a hearing to decide the claim. A written copy of the decision must be sent to the claimant and the commissioner.

(c) A claimant may appeal the decision of the local board by filing notice of the appeal with the local board and the commissioner within 20 days after receiving notice of the local board's decision.

(d) The local board shall file a transcript of the local board hearing with the commissioner within 30 days after receiving notice of appeal.

(e) The commissioner shall, within 30 days after receiving a notice of appeal, set a date for a hearing and notify the claimant and the local board.

(f) A written copy of the commissioner's decision must be sent to the claimant and the local board.

(g) A claimant may appeal the commissioner's decision to the state board of trustees. The appeal must be filed within 20 days after receiving notice of the commissioner's decision.

(h) The state board of trustees shall, within 30 days after receiving notice of appeal, set a date for a hearing and notify the claimant, the local board, and the commissioner.

(i) The claimant, the local board, and the commissioner may present any written or oral evidence necessary for deciding a claim.

(j) The local board, the state board, and the commissioner may administer oaths, receive evidence, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to the hearing, and make findings of fact and decisions in administering this Act.

(k) The attorney general shall represent the commissioner in all proceedings under this Act which require representation.

(l) The local board may be represented by the city attorney or, where appropriate, the county attorney or counsel it may choose to employ.

(m) The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) applies to all hearings authorized by this Act.

Certification of Physical Fitness

Sec. 8. A fire fighter entering service in a member fire department after the effective date of this Act must be certified as physically fit by the local board of trustees prior to admission to the pension system.

Transfer of Accrued Benefits

Sec. 9. A member fire fighter who terminates service and later resumes service with the same fire department or transfers to another member department may transfer all accrued benefits to the new or resumed service.

Entering the Pension System; Required Election

Sec. 10. (a) An election must be held within the local fire department to merge its current pension plan with the pension system.

(b) The election must be held within 14 days after:

- (1) a petition calling for an election and signed by 50 percent of the active fire fighters in the department is filed at the local department; and
- (2) the disclosure required by Section 16 of this Act is made to the fire fighters in the local department.

(c) If the current pension plan of the fire department is not solvent, the election to enter the pension system in this Act must be decided by a majority of the votes cast by qualified fire fighters in the department.

(d) If the current pension plan of the fire department is solvent, the election to enter the pension system in this Act must be decided by at least 60 percent of all votes cast.

(e) In the election required in this section, a fire fighter's vote must be multiplied by the number of years of participation in the current pension plan.

Merger of the Current Pension Plan with the Pension System

Sec. 11. (a) When a fire department under a current pension plan elects to participate in the pension system in this Act, the current pension plan is merged with the pension system.

(b) The costs of the current pension plan shall be determined on an actuarially sound basis using the attained-age normal method and actuarial assumptions described in Subdivision 6 of Section 1 of this Act. The costs must be certified by a qualified actuary as of the effective date of merger or within three years preceding the date of merger.

(c) On the date of merger, all assets and liabilities of the current pension plan are transferred to the pension system and become an allocated part of the system. The assets may be merged with the pension system assets for investment purposes, but a separate account must be maintained for the funds allocated to each plan that has merged with the system.

(d) Following merger, a member's retirement benefits in the pension system are determined by either the future-service method or the buy-back method. The options are available only to fire fighters participating in the current pension plan.

(e)(1) In the future-service method, the qualified service required to earn retirement benefits in the pension system begins as of the date of merger. For determining a person's retirement benefits in the pension system, a fire fighter may choose the formula for benefits used in the current pension plan or the formula for benefits as outlined in this Act. Any retirement benefits accrued prior to the date of merger will also be paid on retirement according to the formula for benefits under the current pension plan.

(2) In the buy-back method in determining the fire fighters' retirement benefits in the pension system, a fire fighter may choose the formula for benefits used in the current pension plan or the formula for benefits as outlined in this Act. The fire fighter who has less than 15 years of service remaining before retirement as of the date of merger may count time served under the current pension plan before the date of merger as qualified service. The time period necessary to make 15 years of service before retirement may be used.

(f) A fire fighter who terminates service prior to the date of merger of his fire department's current pension plan with the pension system is entitled to receive at retirement age the retirement benefits vested under the pension plan in effect during his service. The pension system pays his benefits.

(g) Any benefits being paid by the current pension plan at the date of merger will be paid by the pension system following merger.

(h) On merger of a current pension plan with the pension system, the sponsors of the current pension plan are obligated to make contributions to the pension system in this Act to fund the unfunded prior-service cost. The unfunded prior-service cost is determined as of the date of merger using the attained-age normal method and the actuarial assumptions in the definition of "actuarially sound pension system." The period of funding these contributions shall not exceed 40 years measured from the date of merger.

(i) An election for the local board of trustees must be held within 30 days of entering the pension system. The names of the elected trustees are filed with the commissioner.

Withdrawing from the Pension System

Sec. 12. (a) A current pension plan that merges with the pension system may withdraw from the pension system within five years after the date of merger on a majority vote of the fire fighters in the department voting in the same manner as provided in Section 10 of this Act.

(b) On withdrawal from the pension system, the allocated assets and liabilities as apportioned by an actuary retained by the pension system must be transferred to the plan chosen to replace the pension system.

(c) If a fire fighter terminates service before retirement, vested retirement benefits must be paid to the fire fighter at retirement age. There is no penalty for nonconsecutive years of service.

Benefits Received from Other Plans or Insurance

Sec. 13. The rights to benefits under this pension system are not defeated by benefits or payments received by other plans or insurance.

Investment and Management of the Fund

Sec. 14. (a) If the commissioner's annual report shows a surplus in the fund over the amount necessary to pay benefits due for a reasonable period of time not to exceed five years, the commissioner and trustees shall invest the surplus.

(b) The surplus may be invested in:

(1) bonds or other interest-bearing obligations and securities issued by governmental entities;

(2) shares or share accounts of savings and loan associations insured by the Federal Savings and Loan Insurance Corporation;

(3) shares and share accounts of banks insured by the Federal Deposit Insurance Corporation;

(4) first lien real estate mortgage securities insured by the Federal Housing Administration under the National Housing Act, as amended;¹

(5) investments made by a life insurance company in order to effect a group annuity contract; or

(6) corporation bonds, preferred stocks; and common stocks.

(c) The state board of trustees shall employ a professional investment counselor, a legal reserve life insurance company licensed to do business in the State of Texas, or a bank with trust powers under the laws of the State of Texas. The investment counselor or bank employed by the board must be a nationally known organization whose business includes investment counseling for public pension and retirement funds. A life insurance company employed by the board must provide a group annuity contract that guarantees expenses and provides a

formula for determining the amount of funds available for transfer at the end of a contract period. The contract may not include requirements that guaranteed life annuities be purchased.

(d) The cost of the investment counseling service may be paid from income earned by investments.

(e) No portion of the corpus or income of the fund may be used for purposes other than the benefit of member fire fighters and their beneficiaries.

¹ 12 U.S.C.A. § 1701 et seq.

Pension Plans Required to be Solvent

Sec. 15. (a) Every fire fighter in the state who serves without monetary remuneration must be a member of a solvent pension plan.

(b) After the effective date of this Act, an insolvent pension plan for fire fighters who serve without monetary remuneration must become actuarially sound within three years. An insolvent pension plan must demonstrate to the commissioner within six months after becoming insolvent that steps are being taken to become actuarially sound.

Disclosure of Pension Plan Information Required

Sec. 16. (a) The governing body shall disclose to each fire fighter who serves without monetary remuneration and who is eligible for participation in the pension system the information required by this section.

(b) The commissioner shall distribute to each fire department and each governing body the following information:

- (1) all benefits that are available in the pension system in this Act;
- (2) the contributions required by the pension system;
- (3) the expected return on the investment of a member firefighter;
- (4) when benefits vest;
- (5) the transferability of benefits;
- (6) rights of withdrawing members;
- (7) procedures for filing claims and appeals;
- (8) tax consequences; and
- (9) changes in the law.

(c) The local fire department shall disclose to each fire fighter in the department and to each new fire fighter on his commissioning the information in Subsection (b) of this section.

(d) After a petition for an election as required in Section 10 of this Act has been filed and before the election occurs, the directors of a current pension plan must disclose to its members the information required in Subsection (b) of this section about the current pension plan.

Penalties

Sec. 17. (a) A governing body which does not disclose the information required in Section 16 of this Act or which does not meet the requirements of a solvent pension fund as required in Section 15 of this Act is subject to a civil penalty of not less than \$100 nor more than \$1,000 for each violation, plus reasonable attorney's fees.

(b) The attorney general shall bring suit in a court of appropriate jurisdiction to collect the civil penalties authorized by this Act.

Commissioner

Sec. 18. The duties of the commissioner under this Act shall be performed by the Firemen's Pension Commissioner appointed under the provisions of Chapter 125, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6243e, Vernon's Texas Civil Statutes).

Commissioner's Duties

Sec. 19. (a) The commissioner may not administer any fire fighters' pension plan other than the pension system created by this Act and the system created by Chapter 125, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6243e, Vernon's Texas Civil Statutes).

(b) The commissioner may hear appeals from decisions of local boards in other pension plans.

(c) The commissioner and the state board of trustees shall assemble and disseminate the information necessary for the disclosure requirements concerning the pension system as outlined in Section 16 of this Act.

(d) The commissioner is responsible for recovering any fraudulently acquired benefits. If it appears that fraud has occurred, the commissioner shall notify the local board and the claimant and hold a hearing. If after the hearing the commissioner decides that benefits have been or are being fraudulently acquired, he shall seek action in a court of appropriate jurisdiction.

(e) The commissioner shall collect the revenues from the local boards of trustees for the fund.

(f) The commissioner may request and administer additional state funds in an emergency.

(g) The commissioner shall require annual reports from the local boards of trustees.

(h) The commissioner may at any reasonable time examine the records and accounts of local boards of trustees.

(i) The commissioner may recommend to the state board of trustees rules to implement this Act.

(j) The commissioner shall keep a copy of all rules promulgated under this Act on file in the commissioner's office. A copy of the rules shall be placed with each local board of trustees and shall be made

available for public inspection at any reasonable time.

(k) The commissioner shall prepare the necessary forms for use by local boards of trustees.

(l) The commissioner shall prepare an annual report on the activity and status of the fund. The report shall go to the governor, the lieutenant governor, and the speaker of the house.

(m) The commissioner shall oversee the distribution of all benefits. The commissioner shall make benefit payments to claimants after receiving a copy of a local board of trustees' decision in favor of a claim and reviewing that decision.

(n) If the commissioner overrules a local board's decision, he shall immediately notify the local board and the claimant.

(o) The commissioner shall hear all appeals from local boards of trustees' decisions and issue written opinions in compliance with the procedures required by this Act.

(p) The commissioner shall keep a written transcript of all proceedings and hearings required by this Act.

State Board of Trustees

Sec. 20. (a) There is a state board of trustees composed of six members of the fund.

(b) The governor, with the advice and consent of two-thirds majority membership of the senate, shall appoint the trustees from a list of three to five nominees submitted by the State Firemen's and Fire Marshals' Association of Texas for each vacancy.

(c) The trustees shall serve six-year terms. The trustees appointed to serve on the first board of trustees shall draw by lot at the first board meeting to determine the length of term to be served. Two trustees shall serve a two-year term; two trustees shall serve a four-year term; and two trustees shall serve a six-year term. Thereafter each term shall be for six years.

(d) Five trustees constitute a quorum.

(e) A board decision or recommendation is made by a majority vote of trustees present. The vote must be recorded in the minutes of board meetings.

(f) The trustees shall serve without compensation. Trustees may be reimbursed for travel expenses to attend board meetings.

Duties of the State Board of Trustees

Sec. 21. (a) The board shall employ the certified public accountant, the actuary, and the investment advisors for the fund.

(b) The board shall establish rules and regulations necessary for the administration of the fund.

(c) The board shall hear appeals from the commissioner's decisions.

(d) The board may authorize a cost-of-living increase for any benefit provided in the pension system. If benefits are increased, the board may require an increase in the governing body's contributions to maintain the actuarial soundness of the fund.

(e) The board shall give notice and hold a hearing before authorizing a cost-of-living increase in benefits.

(f) Any cost-of-living increase in benefits is effective after approval by the legislature by concurrent resolution.

Local Board of Trustees

Sec. 22. (a) The local board of trustees is composed of the following:

(1) one representative selected by the governing body;

(2) five members of the local fire department chosen by a majority of fire fighters in qualified service; and

(3) two tax-paying voters who are chosen by the other members of the board.

(b) The local board shall elect a chairman from the members at the first meeting.

(c) Trustees serve two-year terms.

(d) On the first local board, the fire department representatives shall serve staggered terms. The fire department representatives shall draw by lot at the first board meeting to determine the length of term to be served. Three representatives shall serve two-year terms, and two representatives shall serve one-year terms. The first appointments of the tax-paying or citizen representatives shall be one appointed for a two-year term and one appointed for a one-year term. Thereafter, all appointments are for two-year terms.

(e) If a vacancy occurs on the board, it is filled for the remainder of the unexpired term by the procedure by which the position was originally filled.

(f) A majority of board members constitute a quorum.

(g) A board decision is made by majority vote of all members present. The vote must be recorded in the minutes of board meetings.

(h) No member of the local board may receive compensation for service as a trustee.

Duties of the Local Board of Trustees

Sec. 23. (a) The local board of trustees shall collect all governing body contributions at least semi-annually and send the contributions to the commissioner.

(b) The local board shall hear and decide all claims for benefits according to the procedures in Section 7 of this Act.

(c) The board shall mail a copy of a decision on a claim to the parties involved and to the commissioner.

(d) The board shall keep complete records of all claims and proceedings.

(e) The local board shall require a fire fighter who is receiving temporary disability benefits to file a disability rating report from a physician every three months. The board may choose the physician. When the reports indicate a significant change of condition, the local board, after notice and a hearing, must enter an order to modify or terminate benefit payments. The order is sent to the commissioner. If the board terminates benefits, the fire fighter is presumed able to resume fire-fighting duties.

Certification of the Fund

Sec. 24. The commissioner and state board of trustees shall certify the actuarial and financial soundness of the fund every two years. The state board shall employ a qualified actuary and a certified public accountant to assist in the required certification.

Act Not to Repeal Statutory Authority

Sec. 25. This Act does not repeal the statutory authority for any existing or current pension plan. This Act is intended to provide a pension system and death and disability benefits for fire fighters who serve without monetary remuneration. The provisions of this Act are not to be interpreted to affect fully paid fire fighters or their pension systems in any way.

[Acts 1977, 65th Leg., p. 710, ch. 269, §§ 1 to 25, eff. Aug. 29, 1977.]

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 close

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 (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 guardian 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 classification 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 20]

21. As used in provisions of this Act authorizing allowance or assumption of "regular interest", the term means as to all periods of time elapsing prior to January 1, 1970, the rate of two and one-half per centum (2½%) per annum compounded annually; as to all periods of time elapsing from and after January 1, 1970, and prior to January 1, 1977, the rate of three per centum (3%) per annum, compounded annually; and as to all periods of time elapsing from and after January 1, 1977, the rate of four per centum (4%) per annum, compounded annually; provided, however, that this provision shall not alter or require recalculation of the amount of any annuity on which a monthly benefit payment was made prior to July 1, 1977.

[See Compact Edition, Volume 5 for text of 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.

24. "Current Interest" shall mean interest at a rate per annum ascertained each year as being the lesser of (1) the regular interest rate or (2) the amount in the Interest Fund on December 31st of such year after the transfer of all regular interest, divided by an amount equal to the amount in the Municipal Current Accumulation Fund at the beginning of such year plus the sum

of the accumulated deposits in the Employees Saving Fund at the beginning of such year to the credit of all members included in the membership of the Retirement System on December 31st of such year before any transfers for retirements effective December 31st of such year are made.

[See Compact Edition, Volume 5 for text of II, 25 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 shall together exceed the maximum contributions prescribed in paragraph (a) of this subsection, then in such event, the per cent of earnings for Prior Service Contributions 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 annuities arising from prior service credits, special prior service credits, and antecedent service credits, or updated service credits granted by a participating municipality, as well as increased payments authorized by the participating municipality under Section XVIII on or after January 1, 1978, 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 all such annuities and other benefits payable from said account, at any time and for such

period of time as is necessary so that all such payments in any year shall not exceed the amounts available in such participating municipality's account in the Municipality Prior Service Accumulation Fund 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 deposit-

ed to the Municipality Current Service Accumulation account of the municipality assuming the municipality 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.

3. Optional Service Retirement Benefits;

(a) In lieu of the standard service retirement benefit allowable under the preceding subsection, and provided that he shall make such election and nomination within thirty (30) days after the date fixed for retirement, any member retiring for service may elect to receive the actuarial equivalent of his current service benefit in a current service annuity payable to the member during his lifetime, but with the provision that:

Option 1. Upon his death, the current service annuity shall be continued throughout the life of, and paid to, such person as the member shall nominate by written designation duly acknowledged and filed with the Board within the time above provided; or

Option 2. Upon his death, one-half of the current service annuity shall be continued throughout the life of, and paid to, such person as the member shall nominate by written designation duly acknowledged and filed with the Board within the time above provided; or

Option 3. In the event of his death before one hundred twenty (120) monthly payments have been made of his reduced current service annuity, the payments shall be continued to his beneficiary (or to his estate) until the remainder of the one hundred twenty (120) monthly payments have been made; or

Option 4A. In the event of his death before one hundred eighty (180) monthly payments have been made of his reduced current service annuity, the payments shall be continued to his beneficiary (or to his estate) until the remainder of the one hundred eighty (180) monthly payments have been made; or

Option 4B. A benefit payable in equal monthly installments only during the lifetime of the member; or

Option 5. Some other benefit or benefits may be paid either to the member, or to such person or persons as he may nominate, provided the same shall be approved by the Board, and provided such other benefit or benefits, together with the current service annuity of the member, shall be certified by the actuary to be the equivalent in actuarial value of the current service annuity reserve to which the member is entitled at the date fixed for his retirement.

(b) Any member who makes an effective election to have his current service benefit paid in accordance with Option 1, Option 2, Option 3, Option 4A, Option 4B or Option 5, shall likewise receive his prior service benefit, if any, in an adjusted annuity payable upon the same conditions and to the same beneficiary as that selected for his current service benefit, but with the further proviso that all prior service benefits shall be subject to reduction by the Board under the circumstances provided for in Section V of this Act.

4. Deferred Service Retirement with Optional Selection;

Any member who has accumulated sufficient creditable service and who is otherwise qualified for service retirement shall have the right to apply in writing (on such forms as the Board may prescribe) for "deferred retirement" under this subsection, and

continue in service of a participating municipality, accumulating additional creditable service, upon the terms and with the effect hereinbelow provided.

In the application for deferred retirement, the member shall apply for retirement to be effective on or before the last day of the calendar year in which he reaches seventy (70) years of age, and shall select the standard benefit or one of the optional benefits authorized under Subsection 3, above, and designate the beneficiary of the optional benefit selected. After filing of the application for deferred retirement, the member may continue in the service of a participating municipality, and he may thereafter retire at the end of any month, by filing an amended application in writing for commencement of payment of benefits with the Board at least thirty (30) days before the amended effective date of retirement; or, if such member shall die while in service, or before payments of his deferred annuity have begun, he shall be considered to have retired effective as of the last day of the calendar month preceding the month in which his death occurs, and his optional selection shall be effective as of that date. Any such member who has applied for deferred retirement may from time to time, prior to beginning of payments of his annuity to him, file an amended application, changing his written selection of optional allowance and/or designated beneficiary. A member who executes an application for deferred retirement will automatically be retired on the last day of the calendar year in which he becomes seventy (70) years of age. A member who is entitled to have applied for deferred retirement hereunder, but who has not executed and filed an application therefor, shall in case of his death be considered as having retired on an Option 4A benefit effective at the end of the calendar month preceding that in which he dies; or, at the election of his beneficiary, such deceased member shall be considered as having been an active member at death and the beneficiary may thereby elect to receive the accumulated contributions of the deceased member, with interest determined as provided in Subsection 8 of Section VIII.

[See Compact Edition, Volume 5 for text of VII, 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.

8. Return of Deposits Upon Other Terminations;

Should a member cease to be an employee of a participating department except by death or retirement under the provisions of this Act, he shall, upon application, be paid in full the amount of the accumulated deposits standing to the credit of his individual account in the Employees Saving Fund. In the event of death of a member before retirement, and prior to eligibility of the member to deferred retirement as hereinabove provided, the amount of his accumulated deposits standing to the credit of his individual account in the Employees Saving Fund (together with interest on the amount of his accumulated contributions at the beginning of the year in which death occurs, computed from the first day of such year to the first day of the month in which death occurs at the annual rate of interest credited by the System on member accounts during the preceding year) shall be paid to his estate unless he has directed the account to be paid otherwise. Seven (7) years after cessation of service, if no previous demand has been made, any accumulated deposits of a contributor shall be returned to him or to his estate. If the contributor or the administrator of his estate cannot then be found, his accumulated deposits shall be escheated to the Retirement System, and shall be credited to the permanent endowment account of the Endowment Fund.

9. Valuation Basis Adjustment in Current Service Annuities;

The Board of Trustees is authorized to increase the monthly benefits payable after July 1, 1977, on each current service annuity on which a monthly benefit payment was made on June 30, 1977. The monthly benefits payable may be increased by the percentage by which (a) exceeds (b), where (a) is the Current Service Annuity Reserve Fund balance as of July 1, 1977, plus regular interest on the mean balance of such Fund from January 1, 1977, to July 1, 1977, and (b) is the System's current service annuity reserve calculated on the basis of four per-

cent (4%) interest and such mortality and other tables adopted by the Board to become effective on July 1, 1977.

10. Valuation Basis Adjustment in Prior Service Annuities;

The Board of Trustees is authorized to increase the monthly benefits payable after July 1, 1977, on each prior service annuity on which a monthly benefit payment was made on June 30, 1977. The monthly benefit payable may be increased for annuitants in each municipality by the percentage by which (a) exceeds (b), where (a) is the municipality's prior service annuity reserve calculated on the basis of three percent (3%) interest and such mortality and other tables adopted by the Board that are in effect on June 30, 1977, and where (b) is the municipality's prior service annuity reserve calculated on the basis of four percent (4%) interest and such mortality and other tables adopted by the Board to become effective July 1, 1977. It is further provided that no increase in monthly benefits payable on prior service annuities for annuitants of a particular municipality shall be made in an amount which (according to calculations made by the actuary on the basis of four percent (4%) interest and such mortality and other tables adopted by the Board) would 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.

11. Reduction in Payments at Request of Annuitant;

At the written request of any person receiving payments of an annuity, the Director may cause the monthly amount payable as such benefit to be reduced to such amount as the person entitled to such payment shall request, and on written request of the person entitled to such payment may thereafter increase the amount of the monthly payment during the remaining period for which the benefit is payable to an amount not exceeding the monthly amount originally payable under such annuity. Any amounts by which the monthly benefit is reduced at the annuitant's request shall be relinquished to the System, and no person shall have any claim to recover any amounts, the payment of which is foregone under the provisions hereof.

Administration

Sec. VIII.

[See Compact Edition, Volume 5 for Text of VIII, 1]

1a. The Board of Trustees of the Texas Municipal Retirement System is subject to the Texas Sunset Act,¹ but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act

during the period in which state agencies abolished effective September 1 of 1989 and of every 12th year after 1989 are reviewed.

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of VIII, 2 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) All increases in monthly benefit payments on account of current service annuities and of prior service annuities hereafter authorized under this Section shall be obligations of the participating municipality's account in the Municipality Prior Service Accumulation Fund, and shall be subject to the limitations of Section V, providing that all benefit payments chargeable to the account of the participating municipality in the Prior Service Accumulation Fund in any year may not exceed the amounts available in said account in said year.

(4) The reserves required to fund increases allowed by such municipality in payments on account of current service annuities and of 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 on the first day of the next ensuing calendar year; provided, that no additional increase 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; and provided further that any annuitant receiving a benefit which became effective after the participating municipality last adopted Updated Service Credits, shall be ineligible to receive any increase in payments on account of such annuity, unless the participating municipality shall simultaneously allow Updated Service Credits in substitution for those previously granted.

(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.

Optional Supplemental Death Benefits

Sec. XIX. 1. Establishment of Supplemental Death Benefits Fund.

(a) The Board of Trustees shall establish in addition to the several Funds listed in Section V, an additional and separate Fund to be known as the "Supplemental Death Benefits Fund" to provide for payment of supplemental death benefits upon the terms and conditions hereinafter stated.

(b) The Supplemental Death Benefits Fund and the coverage authorized under this section shall not become operative until a sufficient number of municipalities elect to participate in the Fund to cover into the Fund at least four thousand (4,000) members of the System. The Board shall determine the operative date and shall furnish to municipalities which have elected to participate in the Fund notice of the effective date of their participation in the Fund, which shall not precede the operative date of the Fund. Municipalities electing to participate in the Fund after the operative date may begin participation on the first day of any calendar month following notification to the Board of its election to enter the Fund.

2. Participation in Fund by Municipalities.

(a) Any municipality which has one or more of its departments participating in this System on a full-salary basis may, by action of its governing body, elect to participate in the Supplemental Death Benefits Fund for the purpose of providing for its current employees who are members of the System an in-service death benefit described below, and, if the municipality shall further elect such additional coverage, providing the post-retirement death benefits described below for annuitants of the System who were employees of such municipality at time of retirement. If the municipality has less than ten (10) employees who are members of the System, the Board may require evidence satisfactory to the

Board of the good health of such members prior to permitting such municipality to participate in the Fund.

(b) Any municipality may elect to discontinue participation in the Supplemental Death Benefits Fund and terminate the coverage herein provided for effective January 1 of any year by giving the System written notice of its intention to discontinue not later than October 31 preceding the date of termination. The Board of Trustees shall have the right to place such restrictions as it deems proper upon the right of that municipality to again participate in the Fund, if it has previously discontinued participation in the Fund.

3. In-service Death Benefits.

(a) Conditions and Amount of Payment. In the event of the death of a covered member while in service as an employee of a municipality participating in the Supplemental Death Benefits Fund or while such member is covered by Extended Supplemental Death Benefit protection as hereinafter provided, there will be paid from the Fund a cash benefit equal in amount to the current annual salary of the member. The current annual salary shall be the amount actually paid to such employee as compensation for services and on which contributions were made to the System during the period of twelve (12) calendar months preceding the month of death. If the employee has been employed for a lesser period, the current annual salary shall be determined by converting to an annual basis the compensation which was actually paid to the member and on which contributions were made to the System for the period of his actual employment. If the employee received no compensation for services during the period of twelve (12) calendar months preceding the month of death, the current annual salary shall be determined by converting to an annual basis the compensation paid during the month of death. For the member who is covered by Extended Supplemental Death Benefit protection, the current annual salary shall be computed as described above and as if the member had died during the first month of such protection. The Board shall have the power to require such proof of amounts of compensation and periods of employment as it deems necessary.

(b) Period of coverage. A person employed by a participating municipality will be covered for in-service supplemental death benefits effective on the first day of the first month during which all of the following requirements are satisfied:

(i) the employing municipality is participating in the Supplemental Death Benefits Fund for coverage of all System members in its employment;

(ii) the employee is a member of the System; and

(iii) the employee-member is obligated to make a contribution to the System.

Coverage once established will continue in effect during each month thereafter in which all of the above requirements are satisfied as to the employee-member involved; coverage terminates (unless the member qualifies for extended supplemental death benefit protection) on the last day of any month in which the person involved fails to satisfy all of the above requirements. However, in no event will coverage continue beyond the date of termination of such coverage by the municipality or beyond the date of termination of membership in the System.

If a member makes deposits to the System during the same month as an employee of more than one municipality participating in the Fund, a death benefit will be payable only on the basis of the member's employment in such municipality for which he last worked.

(c) Extended Supplemental Death Benefit Protection. A member covered for in-service supplemental death benefits who fails in a succeeding month to earn compensation for service to a municipality participating in this Fund may be granted Extended Supplemental Death Benefit protection despite failure to make a contribution to the System, provided the member applies for such extended coverage and submits proof satisfactory to the Board:

(i) that as a result of illness or injury, the member is unable to engage in any gainful employment; and

(ii) that the member made to the System a required contribution as an employee of a municipality participating in the Supplemental Death Benefits Fund for the month preceding the first entire month for which the Board finds the member to have been unable to engage in any gainful employment.

The Extended Supplemental Death Benefit protection once approved by the Board shall continue for such member until the end of the month in which occurs the first of the following events:

(i) the member returns to work as an employee of a participating municipality; or

(ii) the Board finds that the member has become able to engage in gainful employment; or

(iii) the person ceases to be a member of the System; or

(iv) the member retires under the provisions of this Act.

The Board may require that satisfactory proof of continued inability to engage in gainful occupation be submitted once every twelve (12) months, and the Board may require the member to submit to examination by physicians designated by the Board as a condition to granting or continuation of such extend-

ed protection. Failure of a member to submit to an examination shall be sufficient grounds for finding that the member has become able to engage in gainful employment.

4. Post-Retirement Death Benefits.

In the event that the municipality for which an annuitant was last employed as a member of the System has elected to provide post-retirement supplemental death benefits and such annuitant shall die while such coverage under the Supplemental Death Benefits Fund is maintained in effect by such municipality, there shall be paid from the Fund a cash benefit in the amount of Two Thousand Five Hundred Dollars (\$2,500.00).

No benefit shall be payable by reason of death of an annuitant subsequent to the date of termination of such coverage by the municipality by which the annuitant was last employed as a member of the System.

5. Contributions Required of Municipalities Participating in Fund.

(a) Board to Adopt Tables and Rates. Based upon the recommendations of the actuary, the Board shall adopt, to become effective on the date that the Supplemental Death Benefits Fund and the coverage under this section become operative, such rates and tables as are considered necessary to determine the Supplemental Death Benefits contribution rates required of each municipality. As soon as is practical after the establishment of the Supplemental Death Benefits program and periodically thereafter as part of each general investigation of the mortality and service experience of the members and annuitants of the System, the actuary shall make such investigation of the mortality experience of the members and eligible annuitants participating in the Supplemental Death Benefits program as is deemed necessary and on the basis of such investigation shall recommend for adoption by the Board such rates and tables as are considered necessary to determine Supplemental Death Benefits contribution rates.

The rates and tables recommended by the actuary and adopted by the Board may provide for the anticipated mortality experience of persons covered under the Fund, and for a contingency reserve.

(b) Contribution Rates for Supplemental Death Benefits. At the beginning of each municipality's participation in the Supplemental Death Benefits Fund, the actuary shall calculate the Supplemental Death Benefits contribution rate applicable to the municipality for the remainder of that calendar year and thereafter shall calculate the rate applicable for each succeeding calendar year for participation in the Fund. The rate of contribution shall be calculated on the basis of the rates and tables adopted by the Board and effective for the period for which such determination is made and shall be expressed as

a percentage of earnings of members of the System employed by such municipality.

Each municipality participating in the Supplemental Death Benefits Fund shall make monthly contributions to the Fund in an amount determined by multiplying the Supplemental Death Benefits contribution rate applicable to such municipality (as calculated by the actuary and approved by the Board) by all earnings during the month of members of the System employed by such municipality.

Such contributions shall be in addition to and shall not be included within the limitations prescribed in other sections of this Act on the rate of contribution which may be made by the participating municipality for benefits under the System.

6. Operation of Supplemental Death Benefits Fund.

All Supplemental Death Benefits contributions required of and paid in by municipalities participating in the Supplemental Death Benefits Fund shall be credited to said Fund, and not to separate accounts of the municipalities participating therein. All Supplemental Death Benefits payable under the provisions of this section shall be paid from said Fund and shall be obligations only of said Fund, and not of other funds of the System.

If at any time the amount of benefit payments due from the Supplemental Death Benefits Fund exceeds the balance of such Fund, the Board may direct that funds be transferred from the Endowment Fund General Reserves Account (to the extent that such money is available) to the Supplemental Death Benefits Fund in such amounts as are necessary to cover the deficiency, and the Board may provide for adjustments in future contributions to the Supplemental Death Benefits Fund such as may be required to restore to the General Reserves Account of the Endowment Fund the amounts theretofore transferred to the Supplemental Death Benefits Fund.

The Supplemental Death Benefits Fund shall be managed, controlled, and handled as are other funds of the System. Regular interest shall be allowed by the Board on December 31 in each year on the mean amount in the Fund during the year, and the sum so allowed shall be transferred to the Supplemental Death Benefits Fund from the Interest Fund at the time and in the manner in which interest is allowed to other interest-bearing funds of the System.

7. Discontinuance of Fund.

If the total number of members covered under the Fund becomes less than four thousand (4,000), the Board may order the Fund to be discontinued and all coverage terminated at the end of a calendar year as designated by the Board; provided that no such termination date shall be fixed that is less than six

(6) months beyond the date of adoption of the order of termination.

8. Reinsurance of Certain Risks.

The Board is authorized, if in its judgment such action is necessary, to secure reinsurance from one or more stock insurance companies doing business in this state, to protect against adverse claim experience. Premiums for such reinsurance shall be paid from the Supplemental Death Benefits Fund.

9. Beneficiaries of Supplemental Death Benefits.

Unless the member shall otherwise direct on written forms adopted by the Board the Supplemental Death Benefit shall be paid:

(a) to such person as a covered member has designated as the beneficiary to whom his accumulated contributions shall be paid; or

(b) to such person as a covered annuitant has designated as the person to whom any remaining payments of the benefit are to be continued after death of the annuitant.

If no designated beneficiary survives the covered member or covered annuitant, as the case may be, the Supplemental Death Benefit shall be paid to his or her estate.

[Amended by Acts 1975, 64th Leg., p. 382, ch. 171, §§ 1 to 16, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 118, ch. 58, §§ 1 to 9, eff. April 13, 1977; Acts 1977, 65th Leg., p. 1857, ch. 735, § 2.177, eff. Aug. 29, 1977.]

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."

Section 10 of Acts 1977, 65th Leg., p. 128, ch. 58, 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. 6243j. Police Officers' Pension System in Cities of 50,000 to 400,000

Sec. 1. There is hereby created in this State a Police Officers' Pension System in all cities having a population of not less than fifty thousand (50,000) inhabitants, nor more than four hundred thousand (400,000) inhabitants, according to the last preceding or any future Federal Census; provided, however, that once such pension system becomes operative in any city, any right or privilege accruing to any member thereunder shall be a vested right and the same shall not be denied or abridged thereafter through any change in population of any such city taking such city out of the population bracket as herein prescribed, and said pension system shall continue to operate and function regardless of whether or not any future population exceeds or falls below said population bracket.

Definitions

Sec. 2. The following words and phrases when used in this Act are defined as follows, to wit:

[See Compact Edition, Volume 5 for text of 2(a)]

(b) "Member" means any and all employees in the Police Department who are engaged in law enforcement duties except janitors, car washers, cooks, and secretaries. Member may include reserve, special, or part-time officers as provided in Subsections (d), (e), and (f), Section 3 of this Act.

[See Compact Edition, Volume 5 for text of 2(c) to (i)]

Membership

Sec. 3.

[See Compact Edition, Volume 5 for text of 3(a) and (b)]

(c) Part-time, seasonal, or other temporary employees shall not become, nor be eligible as, members of the Pension System except as provided in Subsections (d), (e), and (f).

(d) A city that has adopted the Pension System in this Act may make reserve, special, or part-time officers eligible as members of the Pension System by vote of the city's governing body, or the city's governing body may call an election to submit the question to the qualified voters of the city.

(e) If a special election is called, the election must be advertised by publication in at least one newspaper of general circulation in the city once each week for four consecutive weeks. The question shall be submitted to the qualified voters as follows:

"FOR: Including reserve, special, or part-time officers in the Police Pension System."

"AGAINST: Including reserve, special, or part-time officers in the Police Pension System."

(f) A city that adopts the Pension System in this Act may include reserve, special, or part-time officers in the Pension System by vote of the city's governing body, by calling a special election as provided in Subsection (e) of this Section, or by joining the question of whether or not to include those officers on the ballot which submits the proposed Police Pension System to the city's qualified voters as provided in Section 25 of this Act.

[See Compact Edition, Volume 5 for text of 4 to 24]

Election; Adoption Without Election

Sec. 25. The city is authorized to call an election to determine if the city desires to adopt this Act after a petition has been presented to the governing body of the city, signed by five per cent (5%) of the qualified voters of the city who voted in the last municipal election. Such election must be advertised by publication in at least one (1) newspaper of general circulation in said city once each week for four (4) consecutive weeks. The question shall be

submitted to the qualified voters of the city at a special election to be held for such purpose at which all ballots shall have printed thereon:

"FOR: The proposed Police Pension System."

"AGAINST: The proposed Police Pension System."

No other issues shall be joined with the proposition submitted at this election on the same ballot except as provided in Subsection (f), Section 3 of this Act.

Nothing herein is to prevent the city governing body from adopting the proposed pension plan without an election.

[See Compact Edition, Volume 5 for text of 26]

[Amended by Acts 1977, 65th Leg., p. 1396, ch. 562, §§ 1 to 5, eff. Aug. 29, 1977.]

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]

Definitions

Sec. 2.

[See Compact Edition, Volume 5 for text of 2(a) to (f)]

(g) "Water treatment" is a business which is conducted under contract and requires ability, experience, and skill in the analysis of water to determine how to treat influent and effluent water to alter or purify the water or to add or remove a mineral, chemical, or bacterial content or substance. The term includes the installation and service of fixed or portable water treatment equipment or a treatment apparatus, in the water treatment system of industrial, commercial, or residential structures. The term also includes the making of connections necessary to the installation of a water treatment system.

Acts Permitted Without a License

Sec. 3. The following acts, work and conduct shall be expressly permitted without license:

(a) Plumbing work done by a property owner in a building owned or occupied by him as his home;

(b) Plumbing work done outside the municipal limits of any organized city, town or village in this state, or within any such city, town or village of less than five thousand (5,000) inhabitants, unless required by ordinance in such city, town or village of less than five thousand (5,000) inhabitants;

(c) Plumbing work done by anyone who is regularly employed as or acting as a maintenance man or maintenance engineer, incidental to and in connection with the business in which he is employed or engaged, and who does not engage in the occupation of a plumber for the general public; construction, installation and maintenance work done upon the premises or equipment of a railroad by an employee thereof who does not engage in the occupation of a plumber for the general public; and plumbing work done by persons engaged by any public service company in the laying, maintenance and operation of its service mains or lines and the installation, alteration, adjustment, repair, removal and renovation of all types of appurtenances, equipment and appliances; appliance installation and service work done by any-

one who is an appliance dealer or is employed by an appliance dealer, and acting as an appliance installation man or appliance service man in connecting appliances to existing piping installations; water treatment installations, exchanges, services, or repairs. Provided, however, that all work and service herein named or referred to shall be subject to inspection and approval in accordance with the terms of all local valid city or municipal ordinances.

[See Compact Edition, Volume 5 for text of 4]

Application of Sunset Act

Sec. 4a. The Texas State Board of Plumbing Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 5 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 or 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; Acts 1977, 65th Leg., p. 1083, ch. 397, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1836, ch. 735, § 2.029, eff. Aug. 29, 1977.]

¹ See Penal Code, § 12.23.

Section 3 of Acts 1977, 65th Leg., p. 1084, ch. 397, provided:

"The Director of Health Resources or his designee shall certify persons as being qualified for the installation, exchange, servicing, and repair of residential water treatment facilities as defined by Subsection (g), Section 2, The Plumbing License Law of 1947, as amended (Article 6243-101, Vernon's Texas Civil Statutes). The director or his designee shall set standards of qualifications to insure the public health and to protect the public from unqualified persons engaging in activities relating to water treatment. Nothing in this section shall be construed to require that persons licensed pursuant to The Plumbing License Law of 1947, as amended (Article 6243-101, Vernon's Texas Civil Statutes), are subject to certification under this section."

TITLE 110A

PUBLIC OFFICES, OFFICERS AND EMPLOYEES

Article

- 6252-8b. Lump Sum Payment for Accrued Vacation Time to Separated State Employee [NEW].
- 6252-11b. Notices and Information of Certain State Job Opportunities [NEW].
- 6252-11c. Use of Private Consultants by State Agencies [NEW].
- 6252-13a. Administrative Procedure and Texas Register Act [NEW].
- 6252-13b. Administrative Code 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].
- 6252-26a. Medical Malpractice Coverage for University of Texas and Texas A&M University Systems [NEW].

Art. 6252-3b. Deferred Compensation Plans for Public Employees; Funding

Contracts Between Political Subdivisions and Public Employees; Insurance, Annuity, Mutual Fund, or other Investment Contracts

Sec. 1. The state or any county, city, town, or other political subdivision may, by contract, agree with any employee to defer, in whole or in part, any portion of that employee's compensation and may subsequently, with the consent of the employee, contract for, purchase, or otherwise procure a life insurance, annuity, mutual fund, or other investment contract for the purpose of funding a deferred compensation program for the employee, from any life underwriter duly licensed by this state who represents an insurance company licensed to contract business in this state, any state or national bank domiciled in this state whose deposits are insured by the Federal Deposit Insurance Corporation, or any savings and loan association doing business in this state whose accounts are insured by the Federal Savings and Loan Insurance Corporation.

[See Compact Edition, Volume 5 for text of 2 to 4]

Premium Payments

Sec. 5. Notwithstanding any other provision of law to the contrary, the state comptroller or the appropriate officer of the county, city, town, or other political subdivision designated to administer the deferred compensation program is hereby authorized to make payment of premiums for the purchase of life insurance or annuity contracts or payment for the purchase of mutual fund or other investment contracts under the deferred compensation program. Such payment shall not be construed to be a prohibited use of the general assets of the

state, county, city, town, or other political subdivision.

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

Limit on Financial Liability of Political Subdivision

Sec. 7. The financial liability of the state, county, city, town, or other political subdivision under a deferred compensation program shall be limited in each instance to the value at the time of disbursement to the employee of the particular life insurance, annuity, mutual fund, or other investment contract purchased for the purpose of funding a deferred compensation program for any employee.

[See Compact Edition, Volume 5 for text of 8]

[Amended by Acts 1977, 65th Leg., p. 1961, ch. 781, § 1, eff. Sept. 1, 1977.]

Section 2 of the 1977 amendatory act provided for an effective date of September 1, 1977.

Art. 6252-4a. Military Service Employees; Restoration to Employment

Restoration to Employment Upon Discharge

Sec. 1. Any employee of the State of Texas or any political subdivision, state institution, county or municipality thereof, other than a temporary employee, an elected official, or one serving under an appointment which requires confirmation by the Senate, who leaves his position for the purpose of entering the Armed Forces of the United States, or enters State service as a member of the Texas National Guard or Texas State Guard or as a member of any of the reserve components of the Armed Forces of the United States shall, if discharged, separated or released from such active military service under honorable conditions within five years from the date of enlistment or call to active service, be restored to employment in the same department, office, commission or board of the State of Texas or any political subdivision, state institution, county or municipality thereof, to the same position held at the time of induction, enlistment or order to active Federal or State military duty or service, or to a position of like seniority, status, and pay if still physically and mentally qualified to perform the duties of such position.

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

[Amended by Acts 1977, 65th Leg., p. 1444, ch. 588, § 1, eff. Aug. 29, 1977.]

Art. 6252-6. State Property, Responsibility and Accounting**Legislative Findings and Purpose**

Sec. 1. The Legislature finds that the State has a very substantial investment in real and personal property and that a substantial portion of the annual income of the State is spent to acquire property for State purposes and to maintain State property. The purpose of this Act is to establish a system for the orderly accounting for State property, to establish responsibility for the maintenance and care of State property and to prescribe the method of fixing pecuniary liability for the misuse of State property by officials and employees. The principles embodied in this Act are now found in the common law and Statutes of this State; this Act restates those principles and prescribes the implementing procedures. The State has a real interest in its property and is entitled to having it managed and used in a sound and businesslike manner so that the maximum benefits may be obtained from it and the State's investment therein protected.

Definitions

Sec. 2. The provisions of Articles 10, 11, 12, 14, 22, and 23, Revised Civil Statutes of Texas, 1925, and Acts, Fiftieth Legislature, 1947, Chapter 359,¹ on the interpretation of Statutes shall apply specifically to this Act. In addition to these standard definitions, in this Act, unless the context otherwise requires:

(a) "Agency" shall include any State department, agency, board or other instrumentality, whether it is financed in whole or part by funds appropriated by the Legislature or not; but shall not include local political subdivisions of the State, such as counties, cities, towns, school districts, flood control districts, irrigation districts, and the like.

(b) "Agency head" shall mean the full-time State elected or appointed official or officials who administer the agency or the executive who has been appointed to administer the agency by a part-time State elected or appointed official or officials.

¹ Article 23a.

Property Accounting

Sec. 3. All real and personal property belonging to the State shall be accounted for by the head of the agency which has possession of the property.

(a) The State Board of Control shall administer the property accounting system established by this Act. The State Auditor shall administer the property responsibility system established by this Act. The Board of Control shall issue such rules and regulations and manual of instruction and prescribe such records, reports, and forms as he deems necessary to accomplish the objects of this Act subject to the

approval of the State Auditor. The State Auditor is directed to cooperate with the Board of Control in the exercise of the Board of Control's rule-making powers herein granted by giving technical assistance and advice.

(b) The Board of Control shall maintain a complete and accurate set of centralized records of State property. However, where the Board of Control finds that an agency has demonstrated its ability and competence to maintain complete and accurate detailed records of the property it possesses without the detailed supervision by the Board of Control, the Board of Control may direct that the detailed records be kept at the principal office of such agency. Where the Board of Control issues such order, the Board of Control shall keep only summary records of the property of such agency and the agency shall keep such detailed records as the Board of Control directs and furnish the Board of Control with such reports at such times as the Board of Control directs.

(c) Each agency head shall cause each item of State property possessed by his agency to be marked so as to identify it. The agency head shall follow the instructions issued by the Board of Control in marking State property.

Agencies and Property Subject to Control

Sec. 4. (a) All State agencies shall comply with the provisions of this Act and shall keep the property records required by the Act.

(b) All real property owned by the State shall be accounted for by the agency which possesses the property. However, the real property administered by the General Land Office shall be accounted for by that office and not by the system prescribed in this Act, and the real property administered by the permanent funds established by the Legislature and people shall be accounted for by the agency now charged with its administration and not by the System prescribed in this Act.

(c) All personal property owned by the state shall be accounted for by the agency that possesses the property. The Board of Control shall by regulation define what is meant by personal property for the purposes of this Act, but such definition shall not include non-consumable personal property having a value of Two Hundred and Fifty Dollars (\$250.00) or less per unit. In promulgating such regulations, the Board of Control shall take into account the value of the property, its expected useful life, and the cost of record keeping should bear a reasonable relationship to the cost of the property upon which records are kept. The Board of Control shall consult with the State Auditor in making such regulations and the Auditor shall cooperate with the Board of Control in the exercise of this rule making power by giving technical assistance and advice.

(d) All medical, surgical, technical equipment and supplies provided by the Texas Department of Health Resources to Local Public Health Units, Local Public Health Laboratories, state institutions, and non-profit institutions, contributing to the promotion and maintenance of public health by the usage of such medical, surgical, technical equipment and supplies shall be accounted for by that Department and not by the system prescribed in this Act.

And providing further, that all medical, surgical, technical equipment and supplies provided by the Texas Department of Health Resources to Local Public Health Units, Local Public Health Laboratories, state institutions, and non-profit institutions, contributing to the promotion and maintenance of public health by the usage of such medical, surgical, technical equipment and supplies which are now being accounted for and complying with the provisions under the present system of accounting shall be deleted from and not required after the passage and the effective date of this Act.

Provided, however, the Texas Department of Health Resources shall maintain at all times a complete record of such medical, surgical, technical equipment and supplies provided and such records shall be verified by the State Auditor and available to the Federal Auditors for the Agency of the Federal Government making such grants for assistance in the purchase of such medical, surgical, technical equipment and supplies.

Property Responsibility

Sec. 5. Each agency head is responsible for the proper custody, care, maintenance, and safekeeping of the State property possessed by his agency.

(a) Each agency head shall designate either himself or one of his employees as property manager. The Board of Control shall be informed in writing by the agency head of the name of the property manager and shall be informed of any changes. Where the Board of Control finds that convenience and efficiency will be served, he may permit more than one property manager to be appointed by the agency head.

(b) The property manager shall maintain the required records on all property possessed by the agency and shall be the custodian of all such property.

(c) No person shall entrust State property to any State official or employee or to anyone else to be used for other than State purposes.

(d) When an agency's property is entrusted to some person other than the property manager, the property manager shall require a written receipt for such property executed by the person receiving custody of the property. When the possession of property of one agency is entrusted to another agency on loan, such transfer shall be done only when authorized in writing by the agency head who is lending such

property and the written receipt shall be executed by the agency head who is borrowing such property. The property manager is relieved of the responsibility for property which is the subject of such a receipt.

(e) Each agency shall make a complete physical inventory of all property in its possession once a year. The inventory shall be taken on the date prescribed for the agency by the Board of Control.

(f) The agency head shall forward a signed statement describing the method by which the inventory was verified, along with a copy of such inventory within forty-five (45) days after the inventory date for the agency.

(g) The Board of Control shall supervise the property records of each agency so that the records accurately reflect the property currently possessed by the agency. The Board of Control shall prescribe the methods whereby items of property are deleted from the property records of the agency. Property that has become surplus, or obsolete and no longer serviceable and has been turned over to the Board of Control for disposal under the laws relating thereto shall be deleted from the records of that agency upon the authorization of the Board of Control. Property that is missing from the agency or property that is disposed of directly by the agency in a legal manner shall be deleted from the Board of Control's records upon the authorization of the State Auditor.

Transfer of Property to Incoming Agency Head

Sec. 6. When there is a change in agency heads or property managers, the incoming agency head or property manager shall execute a receipt for all agency property accounted for to the outgoing agency head or property manager. A copy of such receipt shall be delivered to the Board of Control, to the State Auditor and to the outgoing agency head or property manager. No further warrants in favor of the outgoing agency head or property manager shall be drawn or paid until the State Auditor has certified that the agency property has been properly accounted for. The State Auditor may make this certification without requiring that a physical inventory be taken.

Pecuniary Liability

Sec. 7. Where agency property disappears, whether through theft or other cause, as a result of the failure of the agency head, property manager or agency employee entrusted with the property in writing to exercise reasonable care for its safekeeping, such person shall be pecuniarily liable to the State for the loss thus sustained by the State. Where agency property deteriorates as a result of the failure of the agency head, property manager or agency employee entrusted with the property in writing to exercise reasonable care to maintain and

service the property, such person shall be pecuniarily liable to the State for the loss thus sustained by the State. Where agency property is damaged or destroyed as a result of an intentional wrongful act or of a negligent act of any State official or employee, such person shall be pecuniarily liable to the State for the loss thus sustained by the State. The liability prescribed by this Section may be found to attach to more than one person in a particular instance; in such cases, the liability shall be joint and several.

Reports—Investigation

Sec. 8. When any State property has been lost, destroyed or damaged through the negligence or fault of any State official or employee, the agency head responsible for such property under the provisions of this Act shall immediately report such loss, destruction, or damage to the State Auditor. Upon learning in any manner of such property loss, destruction, or damage, the State Auditor shall investigate the matter. If the investigation discloses that an injury has been sustained by the State through the fault of a State official or employee, the State Auditor shall make written demand upon such State official or employee for reimbursement to the State for the loss so sustained.

Enforcement of State's Claim

Sec. 9. In case the demand made by the State Auditor, in accordance with this Act, for reimbursement for property loss, destruction, or damage is refused or disregarded by the State official or employee upon whom such demand is made, the State Auditor shall report the facts to the Attorney General. If, after an investigation of the facts, the Attorney General finds that legal liability may be adjudged against the State official or employee, he shall take such legal action to recover the monetary loss of the State property occasioned by the loss, damage or destruction as in his opinion may be deemed necessary. Venue for all such suits instituted against a State official or employee shall lie in the Courts of appropriate jurisdiction of Travis County.

Sanctions

Sec. 10. When any agency fails to keep the records required under the provisions of this Act or fails to take the annual physical inventory, the Board of Control shall so inform the Comptroller and the Comptroller may refuse to draw any warrants on behalf of such agency.

Information Copy to State Employees

Sec. 11. Each agency head shall distribute a copy of this Act to each official and employee of his agency and shall give a copy to each new employee of the agency.

[Amended by Acts 1977, 65th Leg., p. 1885, ch. 751, § 1, eff. Nov. 1, 1977.]

Sections 2 to 6 of the 1977 Act amended arts. 6252-6a and 666; § 7 thereof provided that the effective date is November 1, 1977.

Art. 6252-6a. Inter-Agency Transfer of Personal Property

Sec. 1. Any agency of the State of Texas as defined by Section 2 of this Act is hereby authorized to transfer any personal property of the state under its control or jurisdiction to any other agency of the State of Texas as defined by Section 2 of this Act, with or without reimbursement between the agencies; provided, however, that the provisions of this Act shall not apply to any real property.

When any personal property under the control or jurisdiction of one agency is transferred to the control or jurisdiction of any other agency pursuant to the provisions of this Act, such transfers shall be immediately and simultaneously reported to the State Board of Control by the transferor and the transferee on forms prescribed by the State Board of Control, and it shall be the duty of the State Board of Control to adjust the inventory records of the agencies involved in making the transfer. Whenever any transfer made pursuant to this Act is made with reimbursement from funds deposited in the State Treasury, the transferee shall issue a P-1 Voucher payable to the transferor, and the Comptroller of Public Accounts shall issue warrants for reimbursement.

[See Compact Edition, Volume 5 for text of 2 and 3]

[Amended by Acts 1977, 65th Leg., p. 1889, ch. 751, § 2, eff. Nov. 1, 1977.]

Art. 6252-6b. Texas Surplus Property Agency

[See Compact Edition, Volume 5 for text of 1]

Application of Sunset Act

Sec. 1a. The Texas Surplus Property Agency is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the agency is abolished, and this Act expires effective September 1, 1987.

¹ Article 5429k.

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

[Amended by Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.145, eff. Aug. 29, 1977.]

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 (14)]

Financial Statement to be Filed

Sec. 3.

[See Compact Edition, Volume 5 for text of 3(a) to (c)]

(d) Within 30 days after the first Monday in February, every person who is a candidate for an office as an elected officer shall file the financial statement. The secretary of state shall grant an extension for good cause shown of not more than 15 days, provided a request for the extension is received prior to the filing deadline for the financial statement. When the deadline under which a candidate files falls after the first Monday in February, such candidate shall file the statement within 30 days after that deadline, except that when the deadline falls within 35 days of the election in which the candidate is running, the candidate shall file the statement by the fifth day before that election. A person who is a candidate in a special election for an office as an elected officer shall file the financial statement five days prior to the special election. No extensions shall be granted to candidates filing in a primary or general election under a deadline which falls after the first Monday in February or to candidates involved in a special election.

[See Compact Edition, Volume 3 for text of 3(e) to 15]

[Amended by Acts 1975, 64th Leg., p. 2351, ch. 721, § 86, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1006, ch. 372, § 1, eff. Aug. 29, 1977.]

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 legis-

lative 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 mem-

ber 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, 2, eff. Sept. 1, 1975.]

Art. 6252-11b. Notices and Information of Certain State Job Opportunities

Definitions

Sec. 1. In this Act:

(1) "State 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.

(2) "Commission" means the Texas Employment Commission.

(3) "Equal employment office" means the Equal Employment Opportunity Office within the governor's office.

Submission of Job Information

Sec. 2. (a) When a job vacancy occurs or is filled in Travis County within a state agency, the agency shall complete and submit to the commission and to the equal employment office as soon as possible the appropriate information form prescribed by the commission regarding the job vacancy or placement.

(b) As soon as possible at the beginning of each month, a state agency which requires a person to comply with the Merit System Council's employment procedures before employing the person shall complete and submit to the commission and to the equal employment office the appropriate information form prescribed by the commission regarding the job vacancies in Travis County subject to the Merit System

Council's employment procedures which were filled by the agency during the previous month.

Job Information Forms

Sec. 3. The commission shall prescribe forms for information from state agencies necessary for the commission to serve as a central processing agency for state agency job opportunities in Travis County in accordance with this Act.

Use of Job Information

Sec. 4. (a) The commission shall publicly list, in accordance with its procedures, for at least 10 working days, notices of job vacancies submitted to the commission by a state agency under Section 2(a) of this Act unless notified by the agency that the vacancy has been filled.

(b) The commission shall publicly post, in accordance with its procedures, for a month, the information submitted to the commission by a state agency under Section 2(b) of this Act. When a person expresses to the commission an interest in a job vacancy posted in accordance with this subsection for which the commission considers him qualified, the commission shall inform the person of appropriate Merit System Council employment procedures.

(c) When a person expresses to the commission an interest in a job vacancy listed in accordance with Subsection (a) of this section for which the commission considers him qualified and which may be filled only after the person has complied with the Merit System Council's employment procedures, the commission shall inform the person of those procedures.

Other Informational Efforts

Sec. 5. State agencies are encouraged to continue other current efforts to inform various outside applicant recruitment sources of job vacancies.

[Acts 1977, 65th Leg., p. 159, ch. 80, §§ 1 to 5, eff. April 25, 1977.]

Art. 6252-11c. Use of Private Consultants by State Agencies

Definitions

Sec. 1. In this Act:

(1) "Consulting service" means the practice of studying an existing or a proposed operation or project of an agency and advising the agency with regard to the operation or project.

(2) "Private consultant" means an entity that performs consulting services.

(3) "State 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.

Exemption

Sec. 2. This Act does not apply to employment of registered professional engineers, registered architects, or private legal counsel, and it is not intended to discourage their use.

Use and Selection of Private Consultant

Sec. 3. (a) A state agency may use a private consultant only if:

(1) there is a substantial need for the consulting services; and

(2) the state agency cannot adequately perform the consulting services with its own personnel.

(b) In selecting a private consultant, a state agency shall:

(1) base its choice on demonstrated competence and qualifications and on the reasonableness of the fee for the services; and

(2) when other considerations are equal, give a preference to a private consultant whose principal place of business is within the state.

Notice of Intent to Employ Consultant

Sec. 4. At least 30 days before contracting to use a private consultant whose total anticipated fee exceeds \$10,000, a state agency shall notify the Legislative Budget Board and the Governor's Budget and Planning Office of the agency's intent to use a private consultant and shall supply the Legislative Budget Board and the Governor's Budget and Planning Office with information demonstrating that the agency has complied with the policies of Section 3 of this Act.

Information Relating to Consultant Studies

Sec. 5. (a) After a state agency contracts to use a private consultant, the state agency shall, upon request, supply the Legislative Budget Board and the Governor's Budget and Planning Office with copies of all study designs which are developed by the private consultant and copies of all reports resulting from the study by the private consultant.

(b) Copies of all reports shall be filed with the Texas State Library and shall be retained by the library at least five years after receipt.

(c) As part of the biennial budgetary hearing process conducted by the Legislative Budget Board and the Governor's Budget and Planning Office, a state agency shall supply the Legislative Budget Board and the Governor's Budget and Planning Office with reports on what action was taken in response to the recommendations of any private consultant employed by the state agency.

Publication in Texas Register

Sec. 6. (a) If it is reasonably foreseeable that a proposed use of a private consultant may involve a contract with a value in excess of \$10,000, a state agency or a regional council of government created under Chapter 570, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 1011m, Vernon's Texas Civil Statutes), that proposes the use of a private consultant shall file, at least 40 days before contracting with a private consultant, the following information with the Secretary of State for publication in the Texas Register:

(1) a notice of invitation for offers of consulting services;

(2) the person who should be contacted by a private consultant who wants to make an offer;

(3) the closing date for receipt of offers of consulting services; and

(4) the procedure by which the agency or council of government will award the contract for consulting services.

(b) If a state agency or regional council of government and a private consultant enter a contract with a value in excess of \$10,000, the agency or council of government shall file within 10 days after contracting with the private consultant the following information with the Secretary of State for publication in the Texas Register:

(1) a description of the study that the private consultant is to conduct;

(2) the name of the private consultant;

(3) the amount of the contract; and

(4) the due dates of reports that the private consultant is to present to the agency or council of government.

(c) The Texas State Library shall compile a list of reports submitted to it under Section 5(b) of this Act and shall file the list in each quarter of the calendar year with the Secretary of State for publication in the Texas Register.

[Acts 1977, 65th Leg., p. 1185, ch. 454, §§ 1 to 6, eff. Aug. 29, 1977.]

Art. 6252-12a. Automatic Data Processing Systems

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

Central Clearinghouse for Computer Software

Sec. 5A. (a) The Systems Division shall maintain a central clearinghouse for software developed or acquired by state agencies.

(b) Each state agency shall file an inventory record with the Systems Division of the software developed or acquired by the agency. The Systems Division shall distribute to other state agencies information about the software covered by the inventory record.

[See Compact Edition, Volume 5 for text of 6 and 7]

[Amended by Acts 1977, 65th Leg., p. 951, ch. 359, § 1, eff. June 10, 1977.]

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 fiscal note stating the fiscal implications of the proposed rule to the state and to the units of local government of the state, including the total probable cost of enforcing or administering the rule and the amount of revenue that will need to be raised, or will be lost or spent, as a consequence of the rule, each year for the first five years; or stating that the proposed rule has no fiscal implications for the state or for units of local government;
 - (5) a request for comments on the proposed rule from any interested person; and
 - (6) 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.

(g) Each house of the legislature shall adopt rules establishing a process under which the presiding officer of each house shall refer each proposed agency rule to the appropriate standing committee for review prior to adoption of the rule. When an agency files notice of a proposed rule with the secretary of state pursuant to Subsection (a) of this section, it shall also deliver a copy of the notice to the lieutenant governor and the speaker. On the vote of a majority of its members, a standing committee may transmit to the agency a statement supporting or opposing adoption of a proposed rule.

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 re-

turned 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 deposition 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 general, 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.

Discovery, Entry on Property; Use of Reports and Statements

Sec. 14a. (a) Upon motion of any party showing good cause therefor and upon notice to all other parties, and subject to such limitations of the kind provided in Rule 186b of the Rules of Civil Procedure as the agency may impose, the agency in which an action is pending may order any party:

(1) to produce and permit the inspection and copying or photographing by or on behalf of the moving party any of the following which are in his possession, custody, or control: any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain, or are reasonably calculated to lead to the discovery of,

evidence material to any matter involved in the action; and

(2) to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated object or operation thereon which may be material to any matter involved in the action.

(b) The order shall specify the time, place, and manner of making the inspection, measurement, or survey and taking the copies and photographs and may prescribe such terms and conditions as are just.

(c) The identity and location of any potential party or witness may be obtained from any communication or other paper in the possession, custody, or control of a party, and any party may be required to produce and permit the inspection and copying of the reports, including factual observations and opinions, of an expert who will be called as a witness. Provided, that the rights herein granted shall not extend to other written statements of witnesses or other written communications passing between agents or representatives or the employees of any party to the suit or to other communications between any party and his agents, representatives, or other employees, where made subsequent to the occurrence or transaction upon which the suit is based, and made in connection with the prosecution, investigation, or defense of such claim or the circumstances out of which same has arisen.

(d) Any person, whether or not a party, shall be entitled to obtain, upon request, a copy of any statement he has previously made concerning the action or its subject matter and which is in the possession, custody, or control of any party. If the request is refused, the person may move for an agency order under this section. For the purpose of this paragraph, a statement previously made is (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

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. If any party files exceptions or presents briefs, an opportunity must be afforded to all other parties to file replies to the exceptions or briefs. 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 proposal for decision may be amended pursuant to exceptions, replies, or briefs submitted by the parties without again being served on the parties. 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 agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. An agency member may communicate ex parte with other members of the agency, and pursuant to the authority provided in Subsection (q) of Section 14, 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 communicate ex parte with employees of the agency who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the agency and its staff in evaluating the evidence.

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.

Text of subsec. (d) added by Acts 1977, 65th Leg., p. 1960, ch. 780, § 2

(d) This Act does not apply to matters related solely to the internal personnel rules and practices of an agency.

Text of subsec. (d) added by Acts 1977, 65th Leg., p. 2193, ch. 866, § 1

(d) Sections 12 through 20 of this Act do not apply to action by the Commissioner of Banking or the State Banking Board with respect to the issuance of a state bank charter for a bank to assume the assets and liabilities of a state bank the commissioner deems to be in an unsafe condition as defined in Section 1, Article 1a, Chapter VIII, Texas Banking Code of 1943.¹

(e) Sections 12 through 20 of this Act do not apply to the Texas Board of Pardons and Paroles in the conducting of hearings or interviews relating to the grant, rescission, or revocation of parole or other form of administrative release.

¹ Article 342-801a, § 1.

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; Acts 1977, 65th Leg., p. 103, ch. 48, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 136, ch. 65, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 855, ch. 321, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1959, ch. 780, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2193, ch. 866, § 1, eff. Aug. 29, 1977.]

Art. 6252-13b. Administrative Code Act

Short Title

Sec. 1. This Act shall be known and may be cited as the Texas Administrative Code Act.

Definitions

Sec. 2. 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) "Code" means the Texas Administrative Code established by this Act.

(3) "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.

Compilation; Exclusions

Sec. 3. (a) The secretary of state shall compile, index, and cause to be published a Texas Administrative Code. Periodic supplementation of the code shall be made as often as necessary, but not less than once each year. The code shall contain all rules adopted by each agency pursuant to the Administrative Procedure and Texas Register Act,¹ but shall not contain emergency rules adopted pursuant to Section 10(a)(2) of that Act. The code shall also contain appropriate annotations to judicial decisions and opinions of the Attorney General of the State of Texas.

(b) The secretary of state may omit from the code all rules which are general in form but of such local or limited application as to make their inclusion therein impracticable, undesirable, or unnecessary. The secretary of state may also omit from the code 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 code contains a notice stating the general subject matter of the information and the manner in which a copy of it may be obtained. Any such exclusions from publication in the code shall not affect the validity or effectiveness of any rules omitted.

¹ Article 6252-13a.

Adoption by Agency

Sec. 4. The portion of the Texas Administrative Code applicable to an agency may be adopted by the agency as a code of rules, superceding all previous rules of such agency.

Rules

Sec. 5. The secretary of state may promulgate rules to ensure the effective administration of this Act. The rules may include, but are not limited to, rules establishing titles of the code and a system of classification of the subject matter of the code. [Acts 1977, 65th Leg., p. 1703, ch. 678, § 1, eff. Aug. 29, 1977.]

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. (a) Written notice of the date, hour, place, and subject of each meeting held by a governmental body shall be given before the meeting as prescribed by this section, and any action taken by a governmental body at a meeting on a subject which was not stated on the agenda in the notice posted for such meeting is voidable. The requirement for notice prescribed by this section does not apply to matters about which specific factual information or a recitation of existing policy is furnished in response to an inquiry made at such meeting, whether such inquiry is made by a member of the general public or by a member of the governmental body. Any deliberation, discussion, or decision with respect to the subject about which inquiry was made shall be limited to a proposal to place such subject on the agenda for a subsequent meeting of such governmental body for which notice has been provided in compliance with this Act.

[See Compact Edition, Volume 5 for text of 3A(b) 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; Acts 1977, 65th Leg., p. 1674, ch. 659, § 1, eff. Aug. 29, 1977.]

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 educa-

tion, 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. State's Liability for and Defense of Claims Based on Certain Conduct of State Officers and Employees

Persons and Conduct Covered; Limits on Liability

Sec. 1. (a) The State of Texas is liable for and shall pay actual damages, court costs, and attorney fees adjudged against officers or employees of any agency, institution, or department of the state; against a former officer or employee of an agency, institution, or department of the state who was an officer or employee when the act or omission on which the damages are based occurred; or against the estate of such a person where the damages are based on an act or omission by the person in the course and scope of his office or employment for the institution, department, or agency and:

(1) the damages arise out of a cause of action for negligence, except a willful or wrongful act or an act of gross negligence; or

(2) the damages arise out of a cause of action for deprivation of a right, privilege, or immunity secured by the constitution or laws of this state or the United States, except when the court in its judgment or the jury in its verdict finds that the officer or employee acted in bad faith.

(b) This Act shall not be construed as a waiver of any defense, immunity, or jurisdictional bar available to the state or its officers or employees. The state is not liable under this Act to the extent that damages are recoverable under a contract of insurance or under a plan of self-insurance authorized by statute. State liability under this Act is limited to \$100,000 to a single person and \$300,000 for a single occurrence, in the case of personal injury or death or the deprivation of a right, privilege, or immunity, and to \$10,000 for a single occurrence of injury of or damage to property.

Application of Act

Sec. 2. This Act applies to judgments in all cases filed on or after the effective date of this Act and to all judgments in cases pending or on appeal on the effective date of the Act.

Defense of Actions; Conflict of Interest; Security for Cost or Bond

Sec. 3. (a) The attorney general shall defend a present or former officer or employee or his estate

in a cause of action covered by this Act. The state is not liable for the defense of an action or for the damages, court costs, or attorney fees unless either the attorney general has been served in the case and the state has been given an opportunity to defend the suit, or the officer or employee, former officer or employee, or estate against whom the action is brought has delivered to the attorney general all process served on him or it not later than 10 days after the service. The attorney general may settle or compromise the portion of a lawsuit that may result in liability of the state under this Act. It is not a conflict of interest for the attorney general to defend a person or estate under this Act and also to prosecute a legal action against that person or estate as may be required or authorized by law if different assistant attorneys general are assigned the responsibility for each action.

(b) In a case defended by the attorney general under this Act, neither the officer, employee, former officer or employee, estate, or attorney general may be required to advance security for cost or give bond on appeal or on review by writ of error.

Funds for Defense or Prosecution

Sec. 4. No funds other than those appropriated by the legislature from the General Revenue Fund to the attorney general may be used to conduct the defense or prosecution of any action that the attorney general is required to defend or prosecute under the provisions of this Act. The term "conduct of the defense of any action" as used in this section includes, but is not limited to, any steps in the investigation, preparation for trial, and participation in actual trial, including depositions or other discovery, and the preparation of any exhibits or other evidence.

Officer Defined

Sec. 5. A member of the commission, board, or other governing body of an agency, institution, or department is an officer of the agency, institution, or department for purposes of this Act.

[Acts 1975, 64th Leg., p. 799, ch. 309, §§ 1 to 3, eff. May 27, 1975. Amended by Acts 1977, 65th Leg., p. 730, ch. 273, § 1, eff. Aug. 29, 1977.]

Art. 6252-26a. Medical Malpractice Coverage for University of Texas and Texas A&M University Systems

Purpose

Sec. 1. It is the purpose of this Act to promote the health and general welfare of the people of the State of Texas by authorizing the board of regents of The University of Texas System and the board of regents of The Texas A&M University System to provide, as additional compensation and to ensure a proper learning environment, medical malpractice

coverage for its medical staff and students as defined in this Act by purchasing insurance or establishing as self-insurance a Medical Professional Liability Fund from which medical malpractice claims and the costs of defending and administering those claims may be satisfied, and such purposes are hereby declared to be in the public interest.

Definitions

Sec. 2. In this Act:

(1) "Medical staff or students" means medical doctors, doctors of osteopathy, dentists, and podiatrists employed full time by The University of Texas System or The Texas A&M University System; and interns, residents, fellows, and medical or dental students participating in a patient-care program in The University of Texas System or The Texas A&M University System.

(2) "Medical malpractice claim" means a cause of action for treatment, lack of treatment, or other claimed departure from accepted standards of care which proximately results in injury to or death of the patient, whether the patient's claim or cause of action or the executor's claim or cause of action under Article 5525, Revised Civil Statutes of Texas, 1925, as amended, sounds in tort or contract.

(3) "Board" means the board of regents of The University of Texas System or the board of regents of The Texas A&M University System.

(4) "Fund" means the Medical Professional Liability Fund as established in Section 3 of this Act.

Medical Professional Liability Fund

Sec. 3. (a) Each board is authorized to establish a separate self-insurance fund to pay any damages, adjudged in a court of competent jurisdiction, or a settlement of any medical malpractice claim against a member of the medical staff or students arising from the exercise of his employment, duties, or training with The University of Texas System or The Texas A&M University System.

(b) The boards are authorized to pay from the funds all expenses incurred in the investigation, settlement, defense, or payment of claims described above on behalf of the medical staff or students.

(c) On the establishment of each fund, transfers to the fund shall be made in an amount and at such intervals as determined by the board. Each board is authorized to receive and accept any gifts or donations specified for the purposes of this Act and to deposit such gifts or donations into the fund. Each board may invest money deposited in the fund, and any income received shall be retained in the fund. Such money shall be deposited in any of the ap-

proved depository banks of The University of Texas System or The Texas A&M University System. All expenditures from the funds shall be paid pursuant to approval by the boards.

Rules

Sec. 4. Each board is authorized to adopt such rules for the establishment and administration of the fund and the negotiation, settlement, and payment of claims as may be necessary in the furtherance of this Act. Each board is authorized to establish by rule reasonable limits on the amount of claims to be paid from the fund or to be provided in purchased insurance.

Purchase of Insurance

Sec. 5. Each board is authorized to purchase medical malpractice insurance from an insurance company authorized to do business in the State of Texas as it deems necessary to carry out the purpose of this Act.

Legal Counsel

Sec. 6. Each board is authorized to employ private legal counsel to represent the medical staff and students covered by this Act pursuant to the rules of the board.

Limitation on Appropriated Funds

Sec. 7. No funds appropriated by the legislature to either system from the General Revenue Fund may be used to establish or maintain the fund, to purchase insurance, or to employ private legal counsel.

Exemption from Insurance Code; Report

Sec. 8. The establishment and administration of each fund under the authority of this Act and the rules of the boards shall not constitute the business of insurance as defined and regulated in the Insurance Code, as amended; provided, however, the boards of regents shall annually report to the State Board of Insurance information appropriate for carrying out the functions of the State Board of Insurance.

[Acts 1977, 65th Leg., p. 23, ch. 9, eff. March 10, 1977.]

TITLE 112

RAILROADS

CHAPTER ELEVEN. RAILROAD COMMISSION OF TEXAS

Article

6445a. Application of Sunset Act [NEW].

Art. 6445a. Application of Sunset Act

The Railroad Commission of Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1983.

¹ Article 5429k.

[Added by Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.060, eff. Aug. 29, 1977.]

CHAPTER THIRTEEN. MISCELLANEOUS RAILROADS

Article

6550(a). Repealed.

Art. 6550(a). Repealed by Acts 1977, 65th Leg., p. 1149, ch. 435, § 1, eff. Aug. 29, 1977

The repealed article, relating to the Texas State Railroad and the Board of Managers thereof, was derived from Acts 1953, 53rd Leg., p. 79, ch. 58, as amended by Acts 1977, 65th Leg., p. 1832, ch. 735, § 2.005.

Sections 2 to 6 of the 1977 repealing act provided:

"Sec. 2. The legislature hereby grants, sells, and conveys and by this Act does grant, sell, and convey to the city of Palestine all of the interest of the State of Texas in 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, in consideration of the benefit to the public welfare and the agreement of the city of Palestine to develop the property for industrial purposes, with the income from the property to be paid to the Parks and Wildlife Department for the benefit of the Palestine terminal of the Texas State Railroad Park."

"Sec. 3. On or before June 1 of each year, the city of Palestine shall furnish a report to the comptroller of public accounts showing the financial condition of the property for the preceding calendar year and shall transmit all income after expenses to the State Treasury to be deposited in a special fund for use by the Parks and Wildlife Department for the benefit of the Palestine terminal of the Texas State Railroad Park."

"Sec. 4. If the city of Palestine shall fail or cease to develop for industrial purposes the property conveyed by this Act, with the income after expenses paid to the Parks and Wildlife Department as provided in Section 3 of this Act, all right, title, and interest granted and conveyed by this Act shall, without further action by any of the parties, revert to the State of Texas, unless such reversion is waived by the legislature during the biennium following the happening of the conditions of reversion."

"Sec. 5. It is the duty of the present Board of Managers of the Texas State Railroad to transfer and deliver possession of the Texas State Railroad right-of-way and trackage from Mile Post 0.0 at Palestine, extending eastwardly to Mile Post 3.69, to the governing body of the city of Palestine on the effective date of this Act, together with all equipment, supplies, books, records, documents, and property of any kind belonging to the railroad."

"Sec. 6. A copy of this Act, duly certified by the Secretary of State, may be filed of record by the county clerk in the deed records of Anderson County."

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; Application of Sunset Act

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.

(k) The Texas Real Estate Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1979.

¹ Article 5429k.

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 ac-

cepted by the commission. On or after January 1, 1977, an applicant for real estate salesman licensure shall submit evidence, satisfactory to the commission, 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 employee 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 certifica-

tion 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 agreement 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; Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.009, eff. Aug. 29, 1977.]

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, obligations, 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 offi-

cer; 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].

1. STATE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION

- 6673f. Mowing, Baling, Shredding, or Hoeing Rights-of-Way [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.

(c) The State Department of Highways and Public Transportation is subject to the Texas Sunset Act,¹ and unless continued in existence as provided by that Act the department is abolished effective September 1, 1987.

[Amended by Acts 1975, 64th Leg., p. 2063, ch. 678, § 3, eff. June 20, 1975; Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.147, eff. Aug. 29, 1977.]

¹ Article 5429k.

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 appropriated 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. 6673e-1. Acquisition of Rights of Way in Cooperation with Local Officials; Payments to Counties and Cities

In the acquisition of all rights of way authorized and requested by the Texas Highway Department,¹ in cooperation with local officials, for all highways designated by the State Highway Commission² as United States or State Highways, the Texas Highway Department is authorized and directed to pay to the counties and cities not less than ninety percent (90%) of the value as determined by the Texas

Highway Department of such requested right of way or the net cost thereof, whichever is the lesser amount; provided, that if condemnation is necessary, the participation by the Texas Highway Department shall be based on the final judgment, conditioned that such Department has been notified in writing prior to the filing of such suit and prompt notice is also given as to all action taken therein. Such Department shall have the right to become a party at any time for all purposes, including the right of appeal at any stage of the proceedings.

The various counties and cities are hereby authorized and directed to acquire such right of way for such highways as are requested and authorized by the Texas Highway Department, as provided by existing laws, and in the event condemnation is necessary, the procedure shall be the same as that set out in Title 52, Articles 3264 to 3271, inclusive, Revised Civil Statutes of Texas, and amendments thereto.

Upon delivery to the Texas Highway Department of acceptable instruments conveying to the State the requested right of way, the Texas Highway Department shall prepare and transmit to the Comptroller of Public Accounts vouchers covering the reimbursement to such county or city for the Department's share of the cost of providing such right of way, and the Comptroller of Public Accounts is hereby authorized and directed to issue warrants on the appropriate account covering the State's obligations as evidenced by such vouchers.

The Texas Highway Department is authorized and directed to acquire by purchase, gift or condemnation all right of way necessary for the National System of Interstate and Defense Highways.

[Amended by Acts 1977, 65th Leg., p. 1474, ch. 598, § 1, eff. Sept. 1, 1977.]

¹ Name changed to State Department of Highways and Public Transportation; see art. 6663.

² Name changed to State Highway and Public Transportation Commission; see art. 6663.

Section 2 of the 1977 amendatory act provided for an effective date of September 1, 1977.

Art. 6673f. Mowing, Baling, Shredding, or Hoeing Rights-of-Way

Sec. 1. A district engineer of the State Department of Highways and Public Transportation may grant permission to a person, at his request, to mow, bale, shred, or hoe the right-of-way of any designated portion of a highway that is in the state highway system and is within the district supervised by the engineer.

Sec. 2. If a person requesting permission to mow, bale, shred, or hoe a highway right-of-way is not an owner of land adjacent to the right-of-way that is the subject of the request, the district engineer, before granting permission, must provide a person owning land adjacent to the right-of-way the

option of mowing, baling, shredding, or hoeing the right-of-way. A district engineer may deny any request authorized by this Act.

Sec. 3. A person granted permission to mow, bale, shred, or hoe a highway right-of-way under this Act may not receive compensation for the mowing, baling, shredding, or hoeing but is entitled to use or dispose of the hay or other materials produced by the mowing, baling, shredding, or hoeing.

Sec. 4. The state, the State Department of Highways and Public Transportation, and the district engineer are not liable for any personal injuries, property damage, or death resulting from the performance of services or agreements as provided in this Act.

[Acts 1977, 65th Leg., p. 1519, ch. 613, §§ 1 to 4, eff. Aug. 29, 1977.]

1A. CONSTRUCTION AND MAINTENANCE

Art. 6674e. Appropriations from Highway Fund

All moneys now or hereafter deposited in the State Treasury to credit of the "State Highway Fund", including all Federal aid moneys deposited to the credit of said fund under the terms of the Federal Highway Act¹ and all county aid moneys deposited to the credit of said fund under the terms of this Act shall be subject to appropriation for the specific purpose of the improvement of said system of State Highways by the State Department of Highways and Public Transportation. However, direct appropriations in an amount not to exceed \$30 million each fiscal year shall be made from the State Highway Fund to the Department of Public Safety for policing the State Highway System and for the administration of laws prescribed by the Legislature pertaining to the supervision of traffic and safety on public roads. There shall be subtracted from the \$30 million maximum which may be appropriated to the Department of Public Safety the amount of appropriations for each fiscal year from the State Highway Fund to the State Employee's Retirement System to provide for the state's share of retirement contributions, social security taxes, and state paid health insurance for employees and officers of the Department of Public Safety.

[Amended by Acts 1977, 65th Leg., p. 112, ch. 55, § 1, eff. April 12, 1977.]

¹ See 23 U.S.C.A. § 101 et seq.

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."

Art. 6674q-7. County and Road District Highway Fund; Distribution; Board of County and District Road Indebtedness Continued; Powers and Duties; Lateral Road Account

[See Compact Edition, Volume 5 for text of (a) and (b)]

Application of Sunset Act

(b-1) The Board of County and District Road Indebtedness is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1979.

¹ Article 5429k.

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

[Amended by Acts 1977, 65th Leg., p. 1835, ch. 735, § 2.021, eff. Aug. 29, 1977.]

Art. 6674v. Turnpike Projects

[See Compact Edition, Volume 5 for text of 1 to 3]

Application of Sunset Act

Sec. 3a. The Texas Turnpike Authority is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the authority is abolished, and this Act expires effective September 1, 1979.

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 4 to 12a]

Texas Turnpike Authority Feasibility Study Fund

Sec. 12b. Any funds of the Dallas-Fort Worth Turnpike remaining on December 31, 1977, or on such earlier date as the tolls may be lifted in the authority's discretion, after provision for transition expenses, debts, and obligations pursuant to Section 17a of this Act shall be deposited by the authority in a fund which shall be entitled "Texas Turnpike Authority Feasibility Study Fund." No more than One Million Dollars shall be so deposited on such date. The amount deposited shall be reduced by the cost of feasibility studies, if any, requested by the authority and approved by the State Highway and Public Transportation Commission between April 4, 1977, and the date of such deposit. Such fund shall be a revolving fund held in trust by a banking institution chosen by the authority separate and apart from the funds of any project. No funds from any other existing, presently constructed project shall be added to this fund. Such fund shall be used for the purpose of paying the expenses of studying the cost and feasibility and any other expenses relating to the preparation and issuance of turnpike revenue bonds for the construction of any turnpike project; the study of which thereafter shall be authorized by the Texas Turnpike Authority, subject to the prior approval of the State Highway and Public Transportation Commission. The funds expended from this fund on behalf of any such new project shall be regarded as a part of the cost of such new project, and said fund shall be reimbursed out of the proceeds of turnpike revenue bonds issued for the construction of any such additional project. After this Act is signed by the governor, all money reimbursable from the sale of bonds of projects whose studies and other expenses have been advanced from funds of the Dallas-Fort Worth Turnpike shall be reimbursed to this fund for use as a part hereof. For the same purposes the authority may borrow money and issue promissory notes or other interest-bearing evidences of indebtedness payable out of this fund, pledging or hypothecating thereto any sums therein or to be placed therein.

In addition to the above, any municipality or group of municipalities, any county or group of counties, or any combination of municipalities and counties, or any private group or combination of individuals within the state may pay all or part of the expenses of studying the cost and feasibility and any other expenses relating to the preparation and issuance of turnpike revenue bonds for the construction of a turnpike project. The funds expended on behalf of any new project shall be regarded as part of the cost of such new project and, with the consent of the Texas Turnpike Authority, shall be reimburs-

able to the party paying the expenses out of the proceeds of turnpike revenue bonds issued for the construction of such new project.

[See Compact Edition, Volume 5 for text of 13 to 17]

Toll Free Status of Dallas-Fort Worth Turnpike; Transition Plan

Sec. 17a. This section shall apply only to the Dallas-Fort Worth Turnpike, constructed pursuant to this Act and presently existing in Dallas and Tarrant Counties, and to no other project now or hereafter existing and shall supersede any provisions of this Act in conflict herewith. The Dallas-Fort Worth Turnpike shall become toll free, at 12:00 p. m. on December 31, 1977, or on such earlier date as the tolls may be lifted in the authority's discretion. The authority shall, with the approval of the State Highway and Public Transportation Commission, effectuate a plan for an orderly transition of the Dallas-Fort Worth Turnpike to the State Department of Highways and Public Transportation on the date when tolls are lifted. In no event shall the transition plan operate to extend the cutoff time for the collection of tolls set out above. The transition plan shall provide a reasonable time within which said plan shall be consummated and shall include retention by the authority of toll collection and accounting equipment, toll booths and other equipment, furnishings, and supplies usable by the authority in the operation of other projects, the provision of funds for unemployment compensation and other payments required by state law in the termination of employment of state employees, the payment of debts and other contractual obligations of the authority payable from funds of the Dallas-Fort Worth Turnpike, including but not limited to the payment to the City of Fort Worth and Tarrant County of their proportionate interests in the balance remaining in the Special Trust Fund created to hold money paid by said city and county for free use of the Dallas-Fort Worth Turnpike from Oakland Boulevard to the Fort Worth terminus and such other requisites to the transition as may be appropriate. Money for the payment of such transition expenses, debts, and obligations shall be set aside and retained by the authority for such purposes in a trust fund with a banking institution chosen by the authority to be used for such purposes and the payment of expenses appurtenant thereto.

[See Compact Edition, Volume 5 for text of 18 to 23]

Secs. 24 to 26. [Omitted].

Project Pooling Within the Same County

Sec. 27. Notwithstanding any conflicting provisions in this Act and superseding the same where in conflict with this section, the authority is hereby authorized and empowered, but only as to projects

located wholly within the same county and subject to all the provisions of this section:

(a) To determine after a public hearing, subject to prior approval by the State Highway and Public Transportation Commission and a resolution approving the same duly passed by the county commissioners court of the county where the projects are located, that any two or more projects now or hereafter constructed or determined to be constructed by the authority in the same county shall be pooled and designated as a "pooled project." Any existing project or projects may be pooled in whole or in part with any new project or projects or parts thereof. Upon designation such "pooled project" shall become a "project" or "turnpike project" as defined in Section 4(c) of this Act and as used in other sections of this Act. No project may be pooled more than once. Consistent with the trust indenture regarding securing bonds of that project, the resolution of the county commissioners court shall set a date certain when each of the projects being authorized to be pooled shall become toll free.

(b) Subject to the terms of this Act and subject to the terms of any trust agreement securing the payment of any turnpike revenue bonds, the authority is authorized to provide by resolution from time to time for the issuance of turnpike revenue bonds of the authority for the purpose of paying all or any part of the cost of any pooled project or the cost of any part of such pooled project and to pledge revenues of such pooled project or any part thereof.

(c) Subject to the terms of any trust agreement securing the payment of any turnpike revenue bonds, the authority is authorized to issue by resolution turnpike revenue refunding bonds of the authority for the purpose of refunding any bonds then outstanding, issued on account of any pooled project or any part of any pooled project 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 and, if deemed advisable by the authority, for the additional purpose of constructing improvements, extensions, and enlargements to the pooled project or to any part of any pooled project in connection with which or in connection with any part of which bonds to be refunded shall have been issued. Revenues of all or any part of such pooled project may be pledged to the payment of such refunding and improvement bonds. Such improvements, extensions, or enlargements are not restricted to and need not be constructed on any particular part of a pooled project in connection with which bonds to

be refunded may have been issued but may be constructed in whole or in part on other parts of the pooled project not covered by the bonds to be refunded. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties, and obligations of the authority 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 authority, the refunding bonds may be issued in exchange for outstanding bonds or may be sold and the proceeds used for the purpose of redeeming outstanding bonds.

Whether bonds be refunded or not, the authority may, subject to the terms of any trust agreement securing the payment of any turnpike revenue bonds, issue from time to time by resolution, bonds, of parity or otherwise, for the purpose of paying the cost of all or any part of any pooled project or for the purpose of constructing improvements, extensions, or enlargements to all or any part of any pooled project and to pledge revenues of all or any part of such pooled project to the payment thereof. [Amended by Acts 1977, 65th Leg., p. 195, ch. 97, §§ 1 to 3, eff. May 3, 1977; Acts 1977, 65th Leg., p. 1832, ch. 735, § 2.001, eff. Aug. 29, 1977.]

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 multistate 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-1. Definitions of Terms

The following words and terms, as used herein, have the meaning respectively ascribed to them in this Section, as follows:

[See Compact Edition, Volume 5 for text of (a) to (q)]

(r) "Implements of husbandry" shall mean farm implements, machinery and tools as used

in tilling the soil, including self-propelled machinery specifically designed or especially adapted for applying plant food materials or agricultural chemicals and not designed or adapted for the sole purpose of transporting the materials or chemicals, but shall not include any passenger car or truck.

[See Compact Edition, Volume 5 for text of (s) and (t)]

[Amended by Acts 1977, 65th Leg., p. 252, ch. 119, § 1, eff. May 4, 1977.]

Art. 6675a-3. Application for Registration

[See Compact Edition, Volume 5 for text of (a) and (b)]

(c) Owners of motor vehicles, trailers and semi-trailers which are the property of and used exclusively in the service of the United States Government, the State of Texas, or any county, city or school district thereof, shall apply annually to the Department as provided in Section 3-aa¹ of this Act to register all such vehicles, but shall not be required to pay the registration fees herein prescribed, provided that affidavit is made at the time of registration by a person who has the proper authority that such vehicles are the property of and used exclusively in the service of the United States Government, the State of Texas, or a county, city or school district thereof, as the case may be. Owners of vehicles designed and used exclusively for fire fighting shall apply to the Department as provided in Section 3-aa of this Act to register all such vehicles, but shall not be required to pay the registration fees herein prescribed, provided that affidavit is made at the time of registration by a person who has the proper authority that such vehicles are used exclusively for fire fighting; and provided further, that such person shall supply the Department with a reasonable description of the vehicle and the fire fighting equipment mounted thereon. A vehicle owned by a volunteer fire department and used exclusively in the conduct of business of the department shall be registered without the payment of an annual registration fee, if the application for registration is accompanied by an affidavit, stating that the vehicle is owned by, and used exclusively in the conduct of business of, the department and signed by a person with authority to act for the department, and if the application is approved as provided in Section 3-aa of this Act.

[See Compact Edition, Volume 5 for text of (d) to (f)]

[Amended by Acts 1977, 65th Leg., p. 1416, ch. 574, § 1, eff. Aug. 29, 1977.]

¹ Article 6675a-3aa.

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 and March or Month Preceding Expiration Date

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.

Road-tractors, Motorcycles, Trailers, etc.

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.

Operation with Old License Plates

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.

[Amended by Acts 1975, 64th Leg., p. 1919, ch. 621, § 3, eff. Jan. 1, 1978.]

Art. 6675a-4. Registration Dates

(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.

[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. (a) 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.

(b) The owner of a vehicle on which the special devices are displayed is exempt from the payment of fees or penalties imposed by a governmental authority for parking at a meter or in a space with a limitation on the length of time for parking, unless the vehicle was not parked at the time by or for the transportation of a permanently disabled person. This exemption does not apply to fees or penalties imposed by a branch of the United States government. This section does not permit parking a vehicle at a place or time that parking is prohibited.

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. Amended by Acts 1977, 65th Leg., p. 1415, ch. 573, § 1, eff. Aug. 29, 1977.]

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-12a. Duplicate License Receipt

The owner of a vehicle, the license receipt for which has been lost or destroyed, may obtain a duplicate thereof from the State Department of Highways and Public Transportation or the County Collector who issued the original receipt by paying a fee of One Dollar (\$1.00) for said duplicate. The fees derived from the issuance of duplicate license receipts are to be retained by the office issuing same as a fee of office.

[Amended by Acts 1977, 65th Leg., p. 2082, ch. 832, § 1, eff. Aug. 29, 1977.]

Art. 6675a-13. Plate or Plates or Other Devices for Attachment to Vehicles

(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.

[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.

(a-1) [Expired]

[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 noth-

ing 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 en-

gaged 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 and 5B]

Application for License

Sec. 6.

[See Compact Edition, Volume 5 for text of 6(a)]

(b) Every said original application shall state the applicant's full name, place and date of birth, such information to be verified by presentation of a certified copy of the applicant's birth certificate or other documentary evidence deemed satisfactory by the Department. Such application shall also include the thumbprints, or if for any reason thumbprints cannot be taken, the index fingerprints of the applicant, and shall state the sex and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has theretofore been licensed as an operator, commercial operator, or chauffeur, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation, or refusal, and whether the applicant, if less than twenty-five (25) years of age, has completed a driver education course approved by the Department, and such other information as the Department may require to determine the applicant's identity, competency and eligibility. Information about the medical history of an applicant supplied to the Department or a Medical Advisory Board is for the confidential use of the Department or the Board and may not be divulged to any person or used as evidence in a legal proceeding except a proceeding under Section 22 or Section 31 of this Act.

[See Compact Edition, Volume 5 for text of 7 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.

Allergy Designation on Reverse Side of License

Sec. 11C. The Department shall print a statement on the reverse side of each operator's, commercial operator's, and chauffeur's license as follows:

Allergic Reaction to Drugs: _____

[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.

Disposition of Fees

Sec. 15. (a) All fees and charges required by this Act and collected by an officer or agent of the Department shall be remitted without deduction to the Department in Austin, Texas.

(b) All monies received for operators, commercial operators and chauffeurs license fees shall be deposited in the State Treasury in a fund to be known as the Operator's and Chauffeur's License Fund.

(c) Fees and charges deposited in the Operator's and Chauffeur's License Fund under the provisions of this Act may, upon appropriation by the Legislature, be used by the Texas Department of Public Safety for the payment of salaries, purchase of equipment and supplies, maintenance, and any and all other necessary expenses incident to the operation of the Department of Public Safety in carrying out the duties as are by law required of such Department. Any remaining balance in the Operator's and Chauffeur's License Fund on September 1st of each and every year shall remain in such Fund and shall be available for appropriation by the Legislature for the maintenance and support of the Texas Department of Public Safety as set forth hereinabove.

[See Compact Edition, Volume 5 for text of 16 to 20]

Records to be Kept by the Department

Sec. 21.

[See Compact Edition, Volume 5 for text of 21(a) to (e)]

(f) The Department is authorized to provide information pertaining to an individual's date of birth, current license status, most recent address, completion of an approved driver education course, and a listing of reported traffic law violations, and motor vehicle accidents, by date and location, as listed on the records of the Department upon written request and the payment of a Three Dollar (\$3.00) fee by a person showing a legitimate need for such information, provided, however, that if requests for such information be prepared in quantities of one hundred (100) or more from a single person at any one time and upon data processing request forms acceptable to the Department, such information may be provided upon payment of a One Dollar (\$1.00) fee for each individual request.

[See Compact Edition, Volume 5 for text of 21(g) to 21A]

ARTICLE IV—CANCELLATION, SUSPENSION, AND REVOCATION OF LICENSES

[See Compact Edition, Volume 5 for text of 22 and 23]

Occupational License to Meet Essential Need; Hearing; Restrictions; Financial Responsibility; Violations

Sec. 23A. (a) Any person whose license has been suspended for causes other than physical or mental disability or impairment may file with the judge of the county court or district court having jurisdiction within the county of his residence, or with the judge

of the county court or district court having jurisdiction within the county where an offense occurred for which his license was suspended, a verified petition setting forth in detail an essential need for operating a motor vehicle in the performance of his occupation or trade. The hearing on the petition may be ex parte in nature. The judge hearing the petition shall enter an order either finding that no essential need exists for the operation of a motor vehicle in the performance of the occupation or trade of the petitioner or enter an order finding an essential need for operating a motor vehicle in the performance of the occupation or trade of the petitioner. In the event the judge enters the order finding an essential need as set out herein, he shall also, as part of such finding, determine the actual need of the petitioner in operating a motor vehicle in his occupation or trade and shall restrict the use of the motor vehicle to the petitioner's actual occupation or trade and the right to drive to and from the place of employment of the petitioner, and shall require the petitioner to give proof of a valid policy of automobile liability insurance in accordance with the provisions of the Texas Safety Responsibility Law, Article 6701h, Vernon's Annotated Texas Statutes. Such restrictions shall be definite as to hours of the day, days of the week, type of occupation and areas or routes of travel to be permitted, except that in any event the petitioner shall not be allowed to operate a motor vehicle more than ten (10) hours in any twenty-four (24) consecutive hours. Unless further extended at the discretion of the court, orders entered by such court shall extend for a period of twelve (12) months or less from the date of the original suspension. A certified copy of the petition and the court order setting out the judge's finding and the restrictions shall be forwarded to the Department.

[See Compact Edition, Volume 5 for text of 23A(b) 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. 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, Ver-

non'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 31]

Violation of License Provision

Sec. 32. (a) Except as provided in Subsection (b) of this section, it is unlawful for any person to commit any of the following acts:

1. To display or cause or permit to be displayed or to have in possession any operator's, commercial operator's, or chauffeur's license knowing the same to be fictitious or to have been cancelled, revoked, suspended, or altered;
2. To lend or knowingly permit the use of, by one not entitled thereto, any operator's, commercial operator's, or chauffeur's license issued to the person so lending or permitting the use thereof;
3. To display or to represent as one's own, any operator's, commercial operator's, or chauffeur's license not issued to the person so displaying same;

4. To fail or refuse to surrender to the Department on demand any operator's, commercial operator's, or chauffeur's license which has been suspended, cancelled, or revoked as provided by law;

5. To apply for or have in one's possession more than one operator's, commercial operator's, or chauffeur's license that is currently valid; or

6. To use a false or fictitious name or give a false or fictitious address in any application for an operator's, commercial operator's, or chauffeur's license, or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly to conceal a material fact or otherwise commit a fraud in any such application.

(b) After written approval by the Director, the Department may issue to a law enforcement officer an alias driver's license to be used in supervised activities involving criminal investigations. Possession or use for the purposes described in this subsection of a driver's license issued as provided in this subsection by the officer to whom the license was issued is not a violation of this section, unless the Department has suspended, cancelled, or revoked the license. Application for a license for the purposes described in this subsection is not a violation of this section.

[See Compact Edition, Volume 5 for text of 33 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; Acts 1977, 65th Leg., p. 32, ch. 15, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 157, ch. 78, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1400, ch. 564, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1521, ch. 615, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1526, ch. 619, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1893, ch. 754, § 1, eff. Aug. 29, 1977.]

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

¹ See art. 6701d, § 2(n).

[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 5b]

Fees; Collection and Disposition

Sec. 57. Each applicant for a Certificate of Title or reissuance thereof shall pay to the designated agent (County Tax Assessor-Collector) the sum of Three Dollars (\$3), of which the first One Dollar and Fifty Cents (\$1.50) shall be accounted for by the County Tax Assessor-Collector and disposed of in the method hereinafter provided; and the remaining One Dollar and Fifty Cents (\$1.50) shall be forwarded to the State Department of Highways and Public Transportation for deposit in the State Highway Fund, together with the application for a Certificate of Title, within twenty-four hours after the same has been received by the County Tax Assessor-Collector, from which fees the Department shall be entitled and shall use sufficient money to pay all expenses necessary to efficiently administer and perform the duties set forth herein.

The County Tax Assessor-Collector shall turn One Dollar and Fifty Cents (\$1.50) from each fee over to the County Treasurer for deposit in the Officers' Salary Fund.

[See Compact Edition, Volume 5 for text of 58 to 65]

[Amended by Acts 1975, 64th Leg., p. 1370, ch. 524, §§ 1, 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 2083, ch. 833, § 1, eff. Aug. 29, 1977.]

Art. 6687-2. Automobile Salvage Dealers

(a) In this article:

(1) "Automobile salvage dealer" means an individual, corporation, association, partnership, organization, or other entity engaged in the business of obtaining abandoned, wrecked, or junked motor vehicles or motor vehicle parts for scrap disposal, resale, repairing, rebuilding, demolition, or other form of salvage.

(2) "Major component part" means the front end assembly or tail section of an automobile, the cab of a truck (light or heavy), or the bed of a one ton or lighter truck.

(3) "Front-end assembly" means the hood, right and left front fender, grill, bumper, radiator, and radiator support, if two or more such parts are assembled together as one unit.

(4) "Tail section" means the roof, floor pan, right and left rear quarter panel, deck lid, and rear bumper, if two or more of such parts are assembled together as one unit.

(b) An automobile salvage dealer, upon receipt of a motor vehicle described in Subsection (a) of this article, shall immediately remove any unexpired license plates from the motor vehicle and place them in a secure, locked place. An inventory list of such plates showing the license number and the make and motor number of the motor vehicle from which such plates were removed shall be maintained on forms to be furnished by the State Highway Department.¹ Upon demand the license plates and inventory lists shall be surrendered to the State Highway Department for cancellation. It is further provided that all Certificates of Title covering such motor vehicles obtained for scrap disposal, resale of parts or any other form of salvage shall, upon demand, be surrendered to the State Highway Department for cancellation. It shall thereafter be the duty of the State Highway Department to furnish a signed receipt for the surrendered license plates and Certificates of Title.

(c) An automobile salvage dealer shall keep an accurate and legible inventory of each major component part purchased by or delivered to him, as follows:

- (1) date of purchase or delivery;
- (2) name, age, address, sex, and driver's license number of the seller;
- (3) the license number of the motor vehicle used to deliver the major component part;
- (4) a complete description of the item purchased;
- (5) the vehicle identification number of the motor vehicle from which a major component part was removed.

(d) In lieu of the requirements contained in Subsection (c) of this article, an automobile salvage dealer may record the name of the dismantler and the Texas Certificate of Inventory number.

(e) An automobile salvage dealer shall keep all records required to be kept by this article for one year after the date of sale or disposal of the item, and he shall allow an inspection of the records by a peace officer at any reasonable time. A peace officer may inspect the inventory on the premises of the automobile salvage dealer at any reasonable time in order to verify, check, or audit the records. An automobile salvage dealer shall allow and shall not interfere with a full and complete inspection by a peace officer of the inventory, premises, and records of the dealer.

(f) A peace officer may seize, hold, and dispose of according to the Code of Criminal Procedure a motor vehicle or part thereof which has been stolen or

which has been altered so as to remove, change, mutilate, or obliterate a permanent vehicle identification number, derivative number, motor number, or serial number.

(g) A person who fails to comply with any provision of this article or violates a provision of this article commits a Class A misdemeanor.

[Amended by Acts 1977, 65th Leg., p. 1142, ch. 432, § 1, eff. June 15, 1977.]

¹ Name changed to State Department of Highways and Public Transportation; see art. 6663.

Art. 6687-9. Abandoned Motor Vehicle Act

[See Compact Edition, Volume 5 for text of 1]

Auction of Abandoned Motor Vehicles

Sec. 2. As used in this Article:

[See Compact Edition, Volume 5 for text of 2(1) to 2(4)]

(5) "Junked vehicle" means any motor vehicle as defined in Section 1 of Article 6701d-11, Vernon's Texas Civil Statutes, as amended, which:

(a) is inoperative and which does not have lawfully affixed thereto both an unexpired license plate or plates and a valid motor vehicle safety inspection certificate and which is wrecked; dismantled; partially dismantled; or discarded; or

(b) remains inoperable for a continuous period of more than 120 days.

[See Compact Edition, Volume 5 for text of 2(6) to 9]

City or County Procedures for Abating Nuisance

Sec. 10. Any city, town, or county within this State may adopt procedures for the abatement and removal of junked vehicles or parts thereof, as public nuisances, from private property, public property or public rights-of-way; provided, however, that any such procedures shall contain:

(a) A provision requiring not less than a ten (10) day notice, stating the nature of the public nuisance on private property and that it must be removed and abated within ten (10) days and further that a request for a hearing must be made before expiration of said ten (10) day period, such notice to be mailed, by certified or registered mail with a 5-day return requested, to the owner or the occupant of the private premises whereupon such public nuisance exists. If the notice is returned undelivered by the United States Post Office, official action to abate said nuisance shall be continued to a date not less than ten (10) days from the date of such return.

(b) A provision requiring not less than a ten (10) day notice, stating the nature of the public nuisance on public property or on a public right-of-way and that it must be removed and abated within ten (10) days and further that a request for a hearing must be made before expiration of said ten (10) day period, such notice to be mailed, by certified or registered mail with a 5-day return requested, to the owner or the occupant of the public premises or to the owner or the occupant of the premises adjacent to the public right-of-way whereupon such public nuisance exists. If the notice is returned undelivered by the United States Post Office, official action to abate said nuisance shall be continued to a date not less than ten (10) days from the date of such return.

(c) A provision that after a vehicle has been removed it shall not be reconstructed or made operable.

(d) A provision requiring a public hearing prior to the removal of the vehicle or part thereof as a public nuisance, to be held before the governing body of the city, town, or county or any other board, commission, or official of the city, town, or county as designated by the governing body, when such a hearing is requested by the owner or occupant of the public or private premises or by the owner or occupant of the premises adjacent to the public right-of-way on which said vehicle is located, within ten (10) days after service of notice to abate the nuisance. Any resolution or order requiring the removal of a vehicle or part thereof shall include a description of the vehicle, and the correct identification number and license number of the vehicle, if available at the site.

(e) A provision requiring notice to be given to the Texas Highway Department within five days after the date of removal identifying the vehicle or part thereof. Said Department shall forthwith cancel the certificate of title to such vehicle pursuant to Article 1436-1, Vernon's Texas Penal Code, as amended.¹

(f) A provision that such procedure shall not apply to (1) a vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property, (2) a vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or a junkyard or (3) unlicensed, operable or inoperable antique and special interest vehicles stored by a collector on his property, provided that the vehicles and the outdoor storage areas are maintained in such a manner that they do not constitute a health hazard and are

screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery, or other appropriate means.

(g) A provision for administration of the procedures by regularly salaried, full-time employees of the city, town, or county except that the removal of vehicles or parts thereof from property may be by any other duly authorized person.

(h) A provision for the filing of a complaint in an appropriate court for the violation of maintaining a public nuisance, if the nuisance is not removed and abated, and a hearing is not requested, within the ten (10) day period provided in Subsections (a) and (b). If a person is found guilty of maintaining a public nuisance as defined in Section 9 of this Act, the person shall be punished by a fine not to exceed two hundred dollars (\$200) and the court shall order removal and abatement of the nuisance.

¹ Transferred; see, now, art. 6687-1.

[See Compact Edition, Volume 5 for text of 11 to 13]

[Amended by Acts 1977, 65th Leg., p. 1127, ch. 422, §§ 1, 2, eff. Aug. 29, 1977.]

Art. 6701c-1. Commercial Vehicles or Truck-Tractors; Operation by Other Than Owner

[See Compact Edition, Volume 5 for text of 1 and 2]

Subsequent Lease, Memorandum or Agreement Covering Same Vehicle

Sec. 3. When any such lease, memorandum, or agreement, as required by Section 2 of this Act, shall have been filed with the Department covering the operation of any commercial motor vehicle or truck-tractor, no further such lease, memorandum, or agreement covering the operation of the same commercial motor vehicle or truck-tractor may be accepted by the Department for filing, except a lease between regulated carriers subject to the jurisdiction of the Railroad Commission of Texas or the Interstate Commerce Commission under which lawful dual registration of equipment has been specifically approved, until the existing lease, memorandum, or agreement shall have expired in accordance with its own terms or there shall have been filed with the Department a full release thereof. However, if no definite expiration date is included in the document, it is deemed to expire five (5) years after its effective date or five (5) years after the date filed, whichever is later.

Contents of Lease, Memorandum or Agreement; Information Confidential

Sec. 4. Such lease, memorandum, or agreement as required by Section 2 of this Act shall contain or provide, but shall not be limited to, the name and

address of the registered owner of such commercial motor vehicle or truck-tractor, the name and address of the person other than the owner under whose supervision, direction, and control the vehicle will be operated, the actual consideration, the term, the commodity or commodities to be transported under such lease, memorandum, or agreement and a full description of the commercial motor vehicle or vehicles or truck-tractors covered thereby, and except as to leases between regulated carriers subject to the jurisdiction of the Railroad Commission of Texas or the Interstate Commerce Commission, that the operation of such vehicle shall be under the full and complete control and supervision of the person other than the registered owner, that the person other than the registered owner shall provide for each vehicle during the term of such lease, memorandum or agreement proof of financial responsibility as defined in the Texas Motor Vehicle Safety-Responsibility Act, as amended (Article 6701h, Vernon's Texas Civil Statutes), and shall state that such commercial motor vehicle or vehicles or truck-tractors are not the subject of any other such lease, memorandum, or agreement which shall have been filed with the Department of Public Safety in accordance with Section 2 of this Act and which is still in effect, unless the lease, memorandum, or agreement is otherwise required by law.

All information contained in any lease, memorandum, or agreement filed with the Department as required by Section 2 of this Act shall, with the exception of the name and address of the registered owner, the name and address of the person other than the owner, under whose supervision, direction and control the same is being operated, and a full description of the commercial motor vehicle or truck-tractor covered thereby, shall be for the confidential use of the Department; except, however, that the Department of Public Safety may make such information available to the law enforcement officers of the Interstate Commerce Commission, and may further use such information in any judicial proceeding brought in the name of the State of Texas.

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

[Amended by Acts 1977, 65th Leg., p. 143, ch. 69, § 1, eff. Aug. 29, 1977.]

Art. 6701c-3. Protective Headgear for Motorcycle Operators and Passengers

[See Compact Edition, Volume 5 for text of 1]

Necessity of Protective Headgear for Persons under Age 18

Sec. 2. No person under 18 years of age may operate a motorcycle on a public street or highway of this state unless he wears protective headgear which has been approved by the Department of

Public Safety, nor may any person carry a passenger under 18 years of age on a motorcycle on a public street or highway of this state unless the passenger wears protective headgear which has been approved by the Department of Public Safety, nor may any person under 18 years of age ride as a passenger on a motorcycle on a public street or highway of this state unless he wears protective headgear which has been approved by the Department of Public Safety.

[See Compact Edition, Volume 5 for text of 3 to 7]

[Amended by Acts 1977, 65th Leg., p. 332, ch. 162, § 1, eff. Aug. 29, 1977.]

CHAPTER ONE A. TRAFFIC REGULATIONS

Article

6701d-11a. Registration and Width Requirements of Vehicles Transporting Fertilizer [NEW].

6701d-12a. Weight and Size of Vehicles Transporting Milk [NEW].

6701g-1. Removal of Unauthorized Vehicles Parked in Fire Lanes [NEW].

6701g-2. Removal of Unauthorized Vehicles from Parking Facilities or Public Highways [NEW].

Art. 6701d. Uniform Act Regulating Traffic on Highways

ARTICLE I—WORDS AND PHRASES DEFINED

[See Compact Edition, Volume 5 for text of 1]

Vehicles

Sec. 2.

[See Compact Edition, Volume 5 for text of 2(a) to (c)]

(d) "Authorized Emergency Vehicle" means vehicles of the fire department (fire patrol), police vehicles, public and private ambulances for which permits have been issued by the State Board of Health, emergency vehicles of municipal departments or public service corporations as are designated or authorized by the governing body of an incorporated city, private vehicles operated by volunteer firemen or certified Emergency Medical Services volunteers while answering a fire alarm or responding to a medical emergency, and vehicles operated by blood banks or tissue banks, accredited or approved under the laws of this state or the United States, while making emergency deliveries of blood, drugs or medicines, or organs.

[See Compact Edition, Volume 5 for text of 2(e) to 8]

SUBDIVISION II—GOVERNMENTAL AGENCIES, PERSONS, OWNERS, ETC., DEFINED

Director, Department, State, Urban District, Metropolitan Area

Sec. 9.

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

(e) "Metropolitan area" means an area which contains at least one city with a population of

one hundred thousand (100,000) or more, according to the latest federal census, and includes the adjacent incorporated cities and unincorporated urban districts.

[See Compact Edition, Volume 5 for text of 10 to 12]

SUBDIVISION III—HIGHWAYS, RESTRICTED DISTRICTS, ZONES, ETC., DEFINED

Highways, Roads, Streets, Sidewalks, Freeways and Ramps

Sec. 13.

[See Compact Edition, Volume 5 for text of 13(a) to (h)]

(i) "Freeway" means a divided, controlled access highway for through traffic.

(j) "Freeway main lane" means a traffic lane to which access is controlled, permitting uninterrupted flow of through traffic.

(k) "Ramp" means an interconnecting roadway of a traffic interchange, or any connection between highways at different levels or between parallel highways, on which vehicles may enter or leave a designated roadway.

[See Compact Edition, Volume 5 for text of 14 to 20]

SUBDIVISION IV—MISCELLANEOUS DEFINITIONS

[See Compact Edition, Volume 5 for text of 20A to 20H]

Normally and Safely Driven

Sec. 20I. "Normally and safely driven" means the vehicle does not require towing and can be operated under its own power in its customary manner, without further damage or hazard to the vehicle, other traffic, or the roadway.

[See Compact Edition, Volume 5 for text of 21 to 38]

Accident Involving Damage to Vehicle

Sec. 39. The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible without obstructing traffic more than is necessary but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of Section 40. However, when an accident occurs on a main lane, ramp, shoulder, median, or adjacent area of a freeway in a metropolitan area and each vehicle involved can be normally and safely driven, each driver shall move his vehicle as soon as possible off the freeway main lanes, ramps, shoulders, medians, and adjacent areas to a designated accident investigation site, if available, a location on the frontage road, the nearest suitable cross street, or other suitable location to complete the requirements

of Section 40, so as to minimize interference with the freeway traffic. Any person failing to stop or to comply with said requirements under such circumstances shall be guilty of a misdemeanor.

Duty to Give Information and Render Aid

Sec. 40. The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address, and the registration number of the vehicle he is driving and the name of his motor vehicle liability insurer, and shall upon request and if available exhibit his operator's, commercial operator's, or chauffeur's license to the person struck or the driver or occupant of or person attending any vehicle colliding with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

[See Compact Edition, Volume 5 for text of 41 and 42]

Immediate Reports of Accidents

Sec. 43. The driver of a vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle to the extent that it cannot be normally and safely driven shall immediately by the quickest means of communication give notice of such accident to the local police department if such accident occurs within a municipality, otherwise to the office of the county sheriff or the nearest office of the Texas Highway Patrol.

Investigation of Accidents

Sec. 43A. A peace officer notified of a motor vehicle accident resulting in injury to or death of any person or damage to the property of any one person to an apparent extent of Two Hundred and Fifty Dollars (\$250) or more may investigate the accident and file any justifiable charges relating thereto without regard to whether the accident occurred on a public street or highway or other public property, on a road owned and controlled by any water control and improvement district, whether or not a fee is charged for the use of the road, or on private property commonly used by the public such as supermarket or shopping center parking lots, parking areas provided by business establishments for the convenience of their customers, clients, or patrons, parking lots owned and operated by the State or any other parking area owned and operated for the convenience of, and commonly used by, the public. It is specifically provided, however, that this Section shall not apply to accidents occurring on privately owned residential parking areas or on pri-

vately owned parking lots where a fee is charged for the privilege of parking or storing a motor vehicle.

Written Reports of Accident

Sec. 44. (a) The driver of a vehicle involved in an accident resulting in injury to or death of any person, or damage to the property of any one person, including himself, to an apparent extent of at least Two Hundred Fifty Dollars (\$250), shall within ten (10) days after such accident forward a written report of such accident to the Department. Any person who shall fail to make such a report shall be guilty of a misdemeanor and upon conviction shall be punished as provided in Section 143. The venue for the prosecution of such offense shall be in the county where the accident occurred.

[See Compact Edition, Volume 5 for text of 44(b) 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 VIII—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

Compulsory Inspection

Sec. 140. (a) Every owner of a motor vehicle, trailer, semitrailer, pole trailer, or mobile home, registered in this state and operated on the highways of this state, shall have the tires, brake system (including power brake unit), lighting equipment, horns and warning devices, mirrors, windshield wipers, front seat belts in vehicles where seat belt anchorages were part of the manufacturer's original equipment on the vehicle, steering system (including power steering), wheel assembly, safety guards or flaps if required by Section 139A of this Act, exhaust system, and exhaust emission system inspected at state-appointed inspection stations or by State Inspectors as hereinafter provided. Provisions relating to the inspection of trailers, semitrailers, pole trailers, or mobile homes shall not apply when the gross weight of such vehicles and the load carried thereon is four thousand (4,000) pounds or less. Only the mechanism and equipment designated in this section may be inspected, and the owner shall not be required to have any other equipment or part of his motor vehicle inspected as a prerequisite for the issuance of an inspection certificate.

(b) If such inspection discloses the necessity for adjustments, corrections, or repairs, the vehicle shall be adjusted, corrected, or repaired before a certificate is issued as hereinafter provided. The owner may have such adjustments, corrections, or repairs made by such qualified person or persons as he may choose, subject to reinspection as hereinafter provided.

[See Compact Edition, Volume 5 for text of 140(c) and (d)]

(e) After the fifth (5th) day following the expiration of the period designated for the inspection, no person shall operate on the highways of this State any motor vehicle registered in this State unless a valid certificate of inspection is displayed thereon as required by this Section. It is a defense to a prosecution under this Section that a valid inspection permit for the vehicle is in effect at the time of the arrest. Any peace officer of the Department of Public Safety, or any sheriff or deputy sheriff, or any City policeman who shall exhibit his badge or other signs of authority, may stop any vehicle not displaying this inspection certificate as required by

the Department and require the owner or operator to produce an official inspection certificate for the Vehicle being operated.

(f) All motor-assisted bicycles shall be subject to annual inspection in the same manner as are motorcycles, except (1) the fee for inspection shall be Two Dollars (\$2.00), One Dollar (\$1.00) of which shall be paid to the Department to be placed in the Motor Vehicle Inspection Fund and used for the purposes prescribed by law, and (2) the only items of equipment required to be inspected are the brakes, headlamps, and reflectors, which are required to comply with the standards prescribed in Section 184 of this Act. The Department shall promulgate rules and regulations relating to the inspection of motor-assisted bicycles and the issuance and display of inspection certificates with respect to those vehicles.

(g) Any person operating a vehicle on the highways of this State, other than a vehicle licensed in another State and being temporarily and legally operated under a valid reciprocity agreement, in violation of the provisions of this Act or without displaying a valid inspection certificate or having equipment which does not comply with the provisions of Article XIV of this Act is guilty of a misdemeanor and on conviction shall be punished as provided in Section 143 of this Act.

[See Compact Edition, Volume 5 for text of 140(h)]

State Appointed Inspection Stations

Sec. 141. (a) The Department may establish state-appointed inspection stations to carry out the provisions of this Section. Such stations may be located anywhere in the state, and should any be established or appointed, there shall be at least one (1) for each county. The Department is authorized to furnish instructions to, and to supervise official inspection stations and mechanics for inspection of motor vehicles, trailers, semitrailers, pole trailers, and mobile homes for the proper and safe performance of the required items of inspection. The certification of persons to inspect vehicles shall be in accordance with the rules and regulations promulgated by the Department. Every person desiring to operate as an official inspection station shall file an application for a certificate of appointment with the Department.

The application shall be made upon a form prescribed and furnished by the Department, and shall set forth the name of the applicant, the name under which the applicant transacts or intends to transact business, the location of his place of business within the state, and such other information as the Department may require. If the applicant has or intends to have more than one place of business within the state, a separate application shall be made for each place of business.

If the applicant is an association, the application shall set forth the names and the addresses of the persons constituting the association, and if a corporation, the names and addresses of the principal officers thereof, and any other information prescribed by the Department for purposes of identification. The application shall be signed and verified by oath or affirmation by the owner, if a natural person; in the case of a corporation, by an executive officer thereof or some person specifically authorized by the corporation to sign the application, to which shall be attached written evidence of his authority.

Only such locations which fulfill the Department's requirements and whose owners or proprietors comply with the Department regulations shall qualify and be appointed and issued a certificate. Upon approval of an application, the Department shall issue to the owner a certificate of appointment as an official inspection station for the place of business within the state set forth in the application.

Certificates of appointment shall not be assignable, and shall be valid for the owners in whose names issued and for the transaction of business at the place designated therein, and shall at all times be conspicuously displayed at the place for which issued.

An applicant for appointment as an inspector shall submit with his first application a certificate fee of Five Dollars (\$5). An individual's first appointment as an inspector is effective until August 31 of the year following the date of appointment. Thereafter, appointments as inspectors shall be made for one-year periods, and the certificate fee for each year shall be Five Dollars (\$5).

Upon being advised that an application will be approved, an applicant for an appointment as an inspection station shall pay a fee of Thirty Dollars (\$30) which shall constitute the certificate fee until August 31st of the odd-numbered year following the date of appointment. Thereafter, appointments of stations shall be made for two-year periods and the certificate fee for each such period shall be Thirty Dollars (\$30). All certificate fees shall be placed in a fund in the State Treasury to be known as the Motor Vehicle Inspection Fund and shall be used by the Department in the administration of this Act.

(b) Any owner of an official inspection station who by himself, agent, servant, or employee, violates any provision of Section 140, 141, or 142 of this Act, or requires the repair of any mechanism or equipment other than that set forth in the uniform standards of safety items to be inspected as established, shall upon conviction, be punished by a fine not exceeding Two Hundred Dollars (\$200).

(c) The fee for compulsory inspection to be made under this Section shall be Four Dollars (\$4.00). One Dollar (\$1.00) of each fee shall be paid to the

Department and shall be placed in the Motor Vehicle Inspection Fund for the purpose of paying the expense of the administration of this law. The Department may require each official inspection station to make an advance payment of One Dollar (\$1.00) for each inspection certificate furnished to it, and the money so received shall be placed in the Motor Vehicle Inspection Fund, and no further payment to the Department shall be required upon issuance of the certificate. If such advance payment has been made, the Department shall refund to the inspection station the amount of One Dollar (\$1.00) for each unissued certificate which the inspection station returns to the Department in accordance with rules and regulations promulgated by the Department.

If an inspection disclosed the necessity for adjustments, corrections, or repairs, such vehicle shall be reinspected once within seven (7) days free of charge at the same inspection station after the adjustments, corrections, or repairs have been made. Any such vehicle under the terms of this Act, if involved in an accident subsequent to the required inspection, which accident affects the safe operation of any item of inspection, shall return to an inspection station after adequate repairs are made. The subsequent inspection shall be as if the vehicle had not been inspected before. The inspection fee shall be charged for reinspection.

(d) No certificate of inspection shall be issued by any inspector or inspection station until the vehicle has been inspected and found to be in proper and safe condition and to comply with the uniform standards of safety, inspection rules and regulations, and laws of this state. No person shall make, issue, or knowingly use an imitation or counterfeit of an official inspection certificate.

No person shall display or cause or permit to be displayed any inspection certificate knowing the same to be fictitious or issued for another vehicle or issued without the required inspection having been made. No person may transfer an inspection certificate from one windshield or location to another windshield or location.

No person shall perform an inspection or issue an inspection certificate without such person first having been certified to do so by the Department.

No person shall drive or move on any highway any motor vehicle, trailer, semitrailer, pole trailer, mobile home, or combination thereof unless the equipment upon any and every said vehicle is in good working order and adjustment as required in this Act and said vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person or property.

(e) The Department may appoint as official inspection stations, for the limited purpose of inspect-

ing vehicles owned by political subdivisions and agencies of the state, vehicle maintenance facilities owned and operated by the political subdivisions or agencies. The political subdivisions and agencies may not be required to pay the vehicle-inspection fee provided for in Subsection (c) of this section, but shall pay to the Department an advance payment of One Dollar (\$1.00) for each inspection certificate issued to it. The funds received by the Department shall be placed in the Motor Vehicle Inspection Fund for the purpose of paying the expense of the administration of this Act. Inspection stations appointed under this subsection must satisfy all requirements set forth in Sections 140, 141, and 142 of this Act except the provisions relating to the fee contained in Subsection (a) of this section. No officer, employee, or inspector of any political subdivision or agency shall place or cause to be placed any inspection certificate received from the Department under the provisions of this subsection on any vehicle other than a vehicle owned by the political subdivision or agency.

(f) The Director may deny an application for a license or revoke or suspend an outstanding certificate of any inspection station or the certificate of any person to inspect vehicles, in addition to action taken under Subsection (g) of this section, for any of the following reasons:

(1) issuing a certificate without required adjustments, corrections, or repairs having been made when an inspection disclosed the necessity for those adjustments, corrections, or repairs;

(2) refusing to allow the owner of the vehicle to have required corrections or adjustments made by any qualified person he may choose;

(3) issuing an inspection certificate without having made an inspection of the vehicle;

(4) knowingly or wilfully issuing an inspection certificate for a vehicle without the required items of inspection or with items which were not at the time of issuance in good condition and in conformity with the laws of this state or in compliance with rules of the Commission;

(5) failure to charge the required fee for inspection;

(6) charging more than the required inspection fee;

(7) issuing an inspection certificate without being certified to do so by the Department;

(8) proof of unfitness of applicant or licensee under standards set out in this Act or in Commission rules;

(9) material misrepresentation in any application or any other information filed under this Act or Commission rules;

(10) wilful failure to comply with this Act or any rule promulgated by the Commission under the provisions of this Act;

(11) failure to maintain the qualifications for a license; or

(12) any act or omission by the licensee, his agent, servant, employee, or person acting in a representative capacity for the licensee which act or omission would be cause to deny, revoke, or suspend a license to an individual licensee.

When there is cause to deny an application for a certificate of any inspection station or the certificate of any person to inspect vehicles or revoke or suspend the outstanding certificate, the Director shall, in less than thirty (30) days before refusal, suspension, or revocation action is taken, notify the person, in writing, in person, or by certified mail at the last address supplied to the Department by the person, of the impending refusal, suspension, or revocation, the reasons for taking that action, and of his right to an administrative hearing for the purpose of determining whether or not the evidence is sufficient to warrant the refusal, suspension, or revocation action proposed to be taken by the Director. If, within twenty (20) days after the personal notice of the notice is sent or notice has been deposited in the United States mail, the person has not made a written request to the Director for this administrative hearing, the Director, without a hearing, may suspend or revoke or refuse to issue any certificate. On receipt by the Director of a written request of the person within the twenty-day (20-day) period, an opportunity for an administrative hearing shall be afforded as early as is practicable. In no case shall the hearing be held less than ten (10) days after written notification, including a copy of the charges, is given the person by personal service or by certified mail sent to the last address supplied to the Department by the applicant or certificate holder. The administrative hearing in these cases shall be before the Director or his designee. The Director or his designee shall conduct the administrative hearing and may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books, papers, or documents. On the basis of the evidence submitted at the hearing, the Director acting for himself or upon the recommendation of his designee may refuse the application or suspend or revoke the certificate.

Any person dissatisfied with the action of the Director, without filing a motion for rehearing, may appeal the action of the Director by filing a petition within thirty (30) days after the action is taken in a district court in the county where the person resides or in a district court of Travis County, and the court is vested with jurisdiction, and it shall be the duty of the court to set the matter for hearing upon ten (10) days written notice to the Director and the attorney

representing the Director. The court in which the petition of appeal is filed shall determine whether any action of the Director shall be suspended pending hearing and enter its order accordingly, which shall be operative when served upon the Director, and the Director shall provide the attorney representing the Director with a copy of the petition and order. The Director shall be represented in these appeals by the district or county attorney of the county, or the attorney general, or any of their assistants.

(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.

Safety Standards and Inspection Certificates

Sec. 142. (a) The Public Safety Commission shall establish uniform standards of safety whenever applicable with respect to items to be inspected as provided by Section 140 of this Act and shall list those items to be inspected in conformity with these standards established as provided by law. The list of items to be inspected and uniform standards of safety shall be posted in every official inspection station. Every vehicle inspected shall conform in all respects to the uniform standards of safety and the list of items to be inspected established pursuant to this Section.

(b) The Department shall furnish serially numbered certificates of inspection to inspection stations. Each certificate, when issued, shall bear such information as required by the Department for the type of vehicle that was inspected. The certificate shall be invalid after the end of the twelfth month in which the vehicle was last inspected, approved, and the certificate of inspection issued. A certificate of inspection and approval for any vehicle shall be attached to or produced for such vehicle as the Department shall require. The Department shall require that certificates for motorcycles be attached to the rear of the vehicle near the license plate. A record and report as prescribed by the Department shall be made of every inspection and every certificate so issued. No unused certificates of inspection representing a prior inspection period shall be issued after the beginning of the next ensuing period.

(c) The Department may adopt rules necessary for the administration and enforcement of Article XV of this Act.

ARTICLE XVI—PENALTIES AND DISPOSITION OF FINES AND FORFEITURES

[See Compact Edition, Volume 5 for text of 143]

Dismissal of Certain Misdemeanor Charges 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]

Authority of State Highway Commission to Alter Maximum Speed Limits

Sec. 167.

[See Compact Edition, Volume 5 for text of 167(a) to (c)]

(d) The State Highway and Public Transportation Commission shall hold upon request a public hearing at least once each calendar year to consider maximum prima facie speed limits on highways in the State Highway System that are near public or private institutions of elementary or secondary education.

[See Compact Edition, Volume 5 for text of 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.

[Text of subsec. (d) added by Acts 1977, 65th Leg., p. 916, ch. 344, § 2]

(d) The governing body of an incorporated city, town, or village in which a public or private institution of elementary or secondary education is located shall hold upon request a public hearing at least once each calendar year to consider maximum prima facie speed limits on streets and highways, including highways in the State Highway System, near the institution. If a county road outside the State Highway System is located within 500 feet of a public or private institution of elementary or secondary education that is not within the limits of an incorporated city, town, or village, the county commissioners court shall hold upon request a public hearing at least once each calendar year to consider the maximum prima facie speed limit on the road near the institution. A municipal governing body or commissioners court may hold upon request one public hearing for all public and private institutions of elementary or secondary education within its jurisdiction.

[Text of subsec. (d) added by Acts 1977, 65th Leg., p. 2120, ch. 846, § 1]

(d) The commanding officer of a United States military reservation, with respect to any highway, street, or part of a highway or street, including one marked as a route of a highway of the State Highway System, within the limits of the military reservation, has the same authority by order to alter maximum prima facie speed limits on the basis of an engineering and traffic investigation as that delegated to the State Highway and Public Transportation Commission with respect to any officially designated or marked highway, road, or street of the State Highway System. However, a commanding officer may not modify or alter the basic rule established in Subsection (a) of Section 166 of this Act, as amended, nor may he establish a speed limit higher than sixty (60) miles an hour. An order of the State Highway and Public Transportation Commission declaring a speed limit on any part of a designated or marked route of the State Highway System made pursuant to Section 167 or Section 169B of this Act, as amended, supersedes any conflicting order of a commanding officer.

(e) The chairman of the State Highway and Public Transportation Commission and the chairman of the State Board of Education shall provide assistance and information relevant to consideration of

speed limits to commissioners courts, municipal governing bodies, and other interested persons.

Special Speed Limitations

Sec. 169A.

[See Compact Edition, Volume 5 for text of 169A(a) to (d)]

(e) No person may operate on a public highway at a speed greater than thirty (30) miles per hour any self-propelled machinery specifically designed or especially adapted for applying plant food materials or agricultural chemicals and not designed or adapted for the sole purpose of transporting the materials or chemicals, unless the machinery is registered under Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a-1 et seq., Vernon's Texas Civil Statutes).

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 and 171]

Exceptions to Speed Law

Sec. 172. The provisions of this Article regulating speeds of vehicles shall not apply to authorized emergency vehicles responding to calls, nor to police patrols, nor to physicians and/or ambulances responding to emergency calls, provided that incorporated cities and towns may by ordinance regulate the speed of ambulances, emergency medical services vehicles, and authorized emergency vehicles operated by blood banks or tissue banks.

[See Compact Edition, Volume 5 for text of 173 to 177]

ARTICLE XXI—OPERATION OF BICYCLES AND PLAY VEHICLES

[See Compact Edition, Volume 5 for text of 178]

Traffic Laws Apply to Persons 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; Acts 1977, 65th Leg., p. 253, ch. 119, § 2, eff. May 4, 1977; Acts 1977, 65th Leg., p. 267, ch. 128, §§ 1, 2, eff. May 11, 1977; Acts 1977, 65th Leg., p. 916, ch. 344, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2011, ch. 804, §§ 1 to 3, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 2029, ch. 810, §§ 1 to 8, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2088, ch. 836, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2120, ch. 846, § 1, eff. Aug. 29, 1977.]

Section 1 of Acts 1975, 64th Leg., p. 485, ch. 208, provided: "This Act takes effect on January 1, 1976."

Section 4 of Acts 1977, 65th Leg., p. 2016, ch. 804, provided for an effective date of September 1, 1977.

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 and 2]

Width, Length and Height

Sec. 3. (a) No vehicle shall exceed a total outside width, including any load thereon, of ninety-six (96) inches, except that the width of a farm tractor shall not exceed nine (9) feet, excepting further that the limitations as to size of vehicle stated in this Section shall not apply to implements of husbandry, machinery used solely for the purpose of drilling water wells regardless of whether it is a unit in itself or is a unit mounted on a conventional vehicle or chassis, and highway building and maintenance machinery temporarily propelled or moved upon the public highways, excepting further, that the limitations as

to size of vehicles stated in this Section shall not apply to vehicles on which implements of husbandry are being carried or moved provided such vehicles are being moved by the owner thereof or his agent or employee for the purpose of carrying on agricultural operations, and provided further that such implements are being moved or carried a distance of not more than fifty (50) miles, and excepting further, that the width of a motor bus or trolley bus operated exclusively within the limits of an incorporated city or town in this State and suburbs contiguous thereto and the county in which said incorporated city is located shall not exceed one hundred and two (102) inches.

No vehicle, other than vehicles herein exempted from these provisions, which has a total outside width, including any load thereon, in excess of the applicable width herein stated shall be permitted to operate on the public highways except under a special permit issued for such movement as prescribed in Section 2 of this Act or in Chapter 41, General Laws of the Forty-first Legislature, Second Called Session, 1929, as amended (Article 6701a of Vernon's Texas Civil Statutes) or except as authorized in some other Statute permitting or regulating such movement.

[See Compact Edition, Volume 5 for text of 3(b) 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 with 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:

$$W=500 \left(\frac{LN + 12N + 36}{N-1} \right)$$

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 consecu-

tive 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.

Weighing Loaded Vehicles by Inspectors

Sec. 6. Subd. 1. Any License and Weight inspector of the Department of Public Safety, any highway patrolman or any sheriff or his duly authorized deputy, having reason to believe that the gross weight or axle load of a loaded motor vehicle is unlawful, is authorized to weigh the same by means of portable or stationary scales furnished or ap-

proved by the Department of Public Safety, or cause the same to be weighed by any public weigher, and to require that such vehicle be driven to the nearest available scales for the purpose of weighing. In the event the gross weight of such vehicle be found to exceed the maximum gross weight authorized by law, plus a tolerance allowance of five per cent (5%) of the gross weight authorized by law, such license and weight inspector, highway patrolman, sheriff or his duly authorized deputy, shall demand and require the operator or owner of such motor vehicle to unload such portion of the load as may be necessary to decrease the gross weight of such vehicle to the maximum authorized by law plus such tolerance allowance, except as otherwise provided.¹ Such operator or owner shall forthwith unload such vehicle to the extent necessary to reduce the gross weight thereof to such lawful maximum and such vehicle may not be operated further over the public highways or roads of the State of Texas until the gross weight of such vehicle has been reduced to a weight not in excess of the maximum limit plus such tolerance allowance. In the event the axle load of any such vehicle be found to exceed the maximum authorized by law, plus a tolerance allowance of five per cent (5%) of the axle load authorized by law, such officer shall demand and require the operator or owner thereof to rearrange his cargo, if possible, to bring such vehicle and load within the maximum axle load authorized by law, and if this cannot be done by rearrangement of said cargo, then such portion of the load as may be necessary to decrease the axle load to the maximum authorized by law plus such tolerance allowance shall be unloaded before such vehicle may be operated further over the public highways or roads of the State of Texas. Provided, however, that if such load consists of livestock, then such operator shall be permitted to proceed to destination without being unloaded provided destination be within the State of Texas.

It is further provided that in the event the gross weight of the vehicle exceeds the registered gross weight, the License and Weight Inspector, State Highway Patrolman or Sheriff or his duly authorized Deputy shall require the operator or owner thereof to apply to the nearest available County Tax Assessor-Collector for additional registration in an amount that will cause his gross registration to be equal to the gross weight of the vehicle, provided such total registration shall not exceed gross weight allowed for such vehicle, before such operator or owner may proceed. Provided, however, that if such load consists of livestock or perishable merchandise then such operator or owner shall be permitted to proceed with his vehicle to the nearest practical point in the direction of his destination where his load may be protected from damage or destruction in the event he is required to secure additional

registration before being allowed to proceed. It shall be conclusively presumed and deemed prima facie evidence that where an operator or owner is apprehended and found to be carrying a greater gross load than that for which he is licensed or registered, he has been carrying similar loads from the date of purchase of his current license plates and will therefore be required to pay for the additional registration from the date of purchase of such license. Provided further that when an operator or owner is required to purchase additional registration in a county other than the county in which the owner resides, the Tax Assessor-Collector of such county shall remit the fees collected for such additional registration to the State Highway Department to be deposited in the State Highway Fund. It shall be the duty of the State Highway Department, and the necessary funds are hereby appropriated, to remit the counties' portion of such fees collected to the county of the residence of the owner; and it is provided further that the provisions of this Section will in no way conflict with Article 6675a, Section 2, of the Revised Civil Statutes.

It is further provided that all forms and accounting procedure necessary to carry out the provisions of this Section shall be prescribed by the State Highway Department.

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

Subd. 6. Notwithstanding Subdivision 1 of Section 6 of this Article, neither the operator nor the owner of a motor vehicle loaded with timber or pulp wood or agricultural products in their natural state being transported from the place of production to the place of market or first processing shall be required to unload any portion of his load.

¹ See subd. 6 of this section.

[See Compact Edition, Volume 5 for text of 7 to 16a-3]

[Amended by Acts 1975, 64th Leg., p. 34, ch. 18, § 1, eff. March 18, 1975; Acts 1977, 65th Leg., p. 43, ch. 28, § 1, eff. March 24, 1977; Acts 1977, 65th Leg., p. 807, ch. 300, §§ 1, 2, eff. Aug. 29, 1977.]

Section 2 of the 1975 amendatory act provided: "Sec. 2. This amendatory Act does not affect Section 5 1/4 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-11a. Registration and Width Requirement of Vehicles Transporting Fertilizer

Sec. 1. In this Act, "fertilizer" includes agricultural limestone.

Sec. 2. The annual license fee for the registration of motor vehicles designed or modified exclusively to transport fertilizer to the field and spread it, and used only for that purpose, is \$50.

Sec. 3. The width requirements in Subsection (a), Section 3, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6701d-11, Vernon's Texas Civil Statutes), do not apply to a vehicle registered under Section 2 of this Act which has a width of 136 inches or less at its widest point.

[Acts 1977, 65th Leg., p. 373, ch. 184, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 6701d-12. Weight of Vehicles Transporting Ready-Mixed Concrete

Sec. 1. Vehicles used exclusively to transport ready-mixed concrete, which is hereby defined as a perishable product, may be operated upon the public highways of this state with a tandem axle load not to exceed 44,000 pounds, a single axle load not to exceed 20,000 pounds and a gross load not to exceed 64,000 pounds, provided that where the vehicle is to be operated with a tandem axle load in excess of 34,000 pounds, the owner of such vehicle shall first file with the State Department of Highways and Public Transportation a surety bond in the principal sum as fixed by the department, which sum shall not be set at a greater amount than \$15,000 for each vehicle; said bond to be conditioned that the owner of such vehicle will pay to the State of Texas, within the limit of such bond, all damages done to the highways by reason of the operation of such vehicle with a tandem axle load in excess of 34,000 pounds; such bond shall be subject to the approval of the State Department of Highways and Public Transportation.

Sec. 2. When any county, city, or town determines public highways under their jurisdiction are found insufficient to carry the maximum gross vehicle axle loads authorized in Section 1 of this Act, the governing body of such county, city, or town is hereby authorized to prescribe, by order or ordinance, reasonable rules and regulations governing the operation of vehicles to transport ready-mixed concrete over public highways maintained by such county, city, or town. Such rules and regulations may include, but need not be limited to, weight limitations on vehicles with a tandem axle load which exceeds 36,000 pounds, a single axle load which exceeds 12,000 pounds, and a gross load which exceeds 48,000 pounds.

Sec. 3. The governing body of any county, city, or town may require the owner of any ready-mixed concrete vehicle to file a surety bond in a sum not to exceed \$15,000, and conditioned that the owner of such vehicle will pay to such county, city, or town all damages done to the highways by reason of the operation of such vehicle with a tandem axle load in excess of 34,000 pounds.

Sec. 4. This Act does not authorize the operation on the national system of interstate and defense highways in this state of vehicles of a size or weight greater than authorized in Title 23, United States Code, Section 127, as amended. If the United States government authorizes the operation on the national system of interstate and defense highways of vehicles of a size or weight greater than those authorized on January 1, 1977, the new limits automatically shall be in effect on the national system of interstate and defense highways in this state.

[Amended by Acts 1977, 65th Leg., p. 944, ch. 354, § 1, eff. Aug. 29, 1977.]

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. 6701d-12a. Weight and Size of Vehicles Transporting Milk

Sec. 1. A vehicle used exclusively to transport milk may be operated on the public highways of this state if the distance between the front wheel of the forward tandem axle and the rear wheel of the rear tandem axle, measured longitudinally, is at least 28 feet, and the maximum load carried on any group of axles does not exceed 68,000 pounds.

Sec. 2. Nothing in this Act 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 Title 23, U.S.C., Section 127, as amended. If the federal government prescribes or adopts vehicle size or weight limits greater than those now prescribed by Title 23, U.S.C., Section 127, as amended, 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.

[Acts 1977, 65th Leg., p. 1496, ch. 608, §§ 1, 2, eff. Aug. 29, 1977.]

Art. 6701g-1. Removal of Unauthorized Vehicles Parked in Fire Lanes

Sec. 1. The owner of premises at or upon which a governmental body requires the designation and maintenance of a fire lane, or the agent of the owner, may have any motor vehicle that is parked in the fire lane, except an authorized emergency vehicle, removed and stored at the expense of the owner or operator of the vehicle, if the fire lane is required by a governmental body having authority to require fire lanes and is conspicuously designated as a fire lane in compliance with requirements of the governmental body.

Sec. 2. The owner of the premises, or his agent, who has a vehicle removed and stored as provided in Section 1 of this Act is not liable for damages

incurred by the owner or operator of the vehicle as a result of removal or storage if the vehicle is removed by a vehicle wrecker service insured against liability for property damage incurred in towing vehicles and is stored by a storage company insured against liability for property damage incurred in the storage of vehicles.

[Acts 1977, 65th Leg., p. 1243, ch. 480, §§ 1, 2, eff. Aug. 29, 1977.]

Art. 6701g-2. Removal of Unauthorized Vehicles from Parking Facilities or Public Highways

Definitions

Sec. 1. In this Act:

(a) "Parking facility" means any public or private property used, in whole or in part, for restricted and/or paid parking of vehicles. "Parking facility" includes but is not limited to commercial parking lots, parking garages, and parking areas serving or adjacent to businesses, churches, schools, homes, and apartment complexes. "Parking facility" also includes a restricted portion or portions of an otherwise unrestricted parking facility.

(b) "Parking facility owner" means any operator or owner (including any lessee, employee, or agent thereof) of a parking facility.

(c) "Public highway" means any public street, alley, road, right-of-way, or other public way.

(d) "Towing company" means any individual, corporation, partnership, or association engaged in the business of towing vehicles on a public highway for compensation or with the expectation of compensation for the towing, storage, or repair of vehicles. The term "towing company" includes the owner, operator, employee, or agent of a towing company, but does not include cities, counties, or other political subdivisions of the state.

(e) "Vehicle" means every kind of device in, upon, or by which any person or property is or may be transported or drawn on a public highway, except devices moved by human power or used exclusively on stationary rails or tracks.

(f) "Unauthorized vehicle" means any vehicle parked, stored, or situated in or on a parking facility without the consent of the parking facility owner.

Removal by Parking Facility Owner

Sec. 2. (a) A parking facility owner may, without the consent of the owner or operator of an unauthorized vehicle, cause such vehicle to be removed and stored at the expense of the owner or operator of the vehicle, if any of the following occurs:

(i) a sign or signs, specifying those persons who may park in the parking facility and prohibiting all others, are placed so that they are readable day or night from all entrances to the parking facility (but signs need not be illuminated);

(ii) the owner or operator of the unauthorized vehicle has actually received notice from the parking facility owner that the vehicle will be towed away if it is not removed; or

(iii) the unauthorized vehicle is obstructing an entrance, exit, fire lane, or aisle of the parking facility.

(b) Otherwise, a parking facility owner may not have an unauthorized vehicle removed except under the direction of a peace officer or the owner or operator of such vehicle.

(c) A parking facility owner who causes the removal of an unauthorized vehicle in compliance with the provisions of this section shall not be liable for damages arising out of the removal or storage of such vehicle, if the same is removed by an insured towing company.

Removal by Towing Company

Sec. 3. (a) A towing company may, without the consent of the owner or operator of an unauthorized vehicle, remove and store such vehicle at the expense of the owner or operator of the vehicle, if any of the following occurs:

(i) a sign or signs, specifying those persons who may park in the parking facility and prohibiting all others, are placed so that they are readable day or night from all entrances to the parking facility (but signs need not be illuminated);

(ii) the towing company has received written verification from the parking facility owner that the owner or operator of the unauthorized vehicle has been actually notified by the parking facility owner that the vehicle will be towed away if it is not removed; or

(iii) the unauthorized vehicle is obstructing an entrance, exit, fire lane, or aisle of the parking facility.

(b) Otherwise, a towing company may not remove an unauthorized vehicle except under the direction of a peace officer or the owner or operator of such vehicle.

Removal from Public Highway by Towing Company

Sec. 4. A towing company may not remove a vehicle from a public highway except under the direction of a peace officer or the owner or operator of such vehicle.

Pecuniary Interest in Towing Company by Parking Facility Owner

Sec. 5. A parking facility owner may not accept anything of value, directly or indirectly, from a towing company in connection with the removal of a vehicle from a parking facility. A parking facility owner may not have a pecuniary interest, directly or indirectly, in a towing company which removes unauthorized vehicles for compensation from a parking facility in which the parking facility owner has an interest.

Pecuniary Interest in Parking Facility by Towing Company

Sec. 6. A towing company may not give anything of value, directly or indirectly, to a parking facility owner in connection with the removal of a vehicle from a parking facility. A towing company may not have a pecuniary interest, directly or indirectly, in a parking facility from which the towing company removes unauthorized vehicles for compensation.

Violation of Act; Damages; Attorney's Fees

Sec. 7. (a) Any towing company or parking facility owner who violates this Act shall be liable to the owner or operator of the vehicle for damages arising out of the removal or storage of such vehicle and/or any towing or storage fees assessed in connection with the removal or storage of such vehicle. Negligence on the part of the parking facility owner or towing company need not be proven in order to recover under this Act.

(b) In any suit brought under this Act, the prevailing party shall recover reasonable attorney's fees from the nonprevailing party.

Penalty; Injunction

Sec. 8. Any violation of this Act is a Class B misdemeanor. Any violation of the provisions of this Act may be enjoined pursuant to the provisions of the Deceptive Trade Practices-Consumer Protection Act.¹

[Acts 1977, 65th Leg., p. 2085, ch. 835, §§ 1 to 8, eff. Aug. 29, 1977.]

¹ Business and Commerce Code, § 17.41 et seq.

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 Registrations; 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 reasonable 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.]

Art. 6701k. Vehicle Equipment Safety Commission

[See Compact Edition, Volume 5 for text of 1]

Application of Sunset Act

Sec. 1a. The office of Vehicle Equipment Safety Compact Commissioner for Texas is subject to the

Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1979.

[See Compact Edition, Volume 5 for text of 2 and 3]

[Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.011, eff. Aug. 29, 1977.]

¹ Article 5429k.

CHAPTER FIVE. BRIDGES AND FERRIES

Art. 6795b-1. Causeways, Bridges, Tunnels, Turnpikes, or Highways Authorized in Gulf Coast Counties of 50,000 or More

Construction and Operation Authorized; Cost and Expenses

Sec. 1. Any county in the State of Texas which borders on the Gulf of Mexico or any bay or inlet opening thereto and which has a population of fifty thousand (50,000) or more, according to the last Federal Census preceding the authorization of bonds hereunder, acting through its Commissioners Court, is hereby authorized and empowered to construct, acquire, improve, operate and maintain a causeway, bridge, tunnel, turnpike, highway, or any combination of such facilities, including all necessary overpasses, underpasses, interchanges, entrance plazas, toll houses, service stations, approaches, fixtures, accessories, equipment, and administration, storage, and other necessary buildings, together with all property rights, easements, and interests acquired in connection therewith (all of which are hereinafter referred to as "the project") from one (1) point in said county to another, or from one (1) point in said county to a point in another county (regardless of the population of such other county), and to issue its tax bonds, revenue bonds, or combination tax and revenue bonds, to pay the cost of such construction, acquisition, or improvement. Among other things, the cost of the project may include the following: the cost of construction; the cost of all property, real, personal, and mixed, and all appurtenances, easements, contracts, franchises, pavements, and properties of every nature, used or useful in connection with the construction, acquisition, improvement, operation, and maintenance of the project; the payment of the cost of condemning any such property, including both the payment of the award and the payment of the court costs and attorneys fees; the payment of all legal, fiscal, and engineering expenses incurred in connection with the acquisition and construction of the project and the making of preliminary surveys and investigations and the authorization and issuance of the bonds; and the payment of interest on the bonds and operating expenses on the project prior to and during the period occupied by the construction of the project and for one (1) year thereafter. If the Commissioners Court

shall consider it desirable to acquire, through purchase or lease, existing ferry properties for the purpose of operating such properties during the period of construction, over the route to be traversed by the project, such properties may be so acquired and the cost thereof paid from the proceeds of the bonds. Any preliminary expenses paid from county funds shall be repaid to such funds from the proceeds of the bonds when available, and all engineering and fiscal contracts and agreements for such projects heretofore entered into are hereby validated and confirmed. Where any causeway, bridge, tunnel, turnpike, highway, or combination thereof constructed or acquired and financed hereunder extends from a point in the county issuing the bonds to a point in another county, it may be so constructed or acquired only after there shall have been adopted by the Commissioners Court of the county not issuing the bonds, a resolution approving and consenting to such construction or acquisition, and the Commissioners Court of any such county is hereby authorized to adopt such resolution. So long as and to the extent that the project, or part thereof, has not been designated as part of the State Highway System and is not considered a Turnpike Project, as defined in Chapter 410, Acts of the Fifty-Third Legislature, 1953, as amended,¹ that part of the project (which has not been so designated and is not so considered) in each county shall be considered a part of the county road system of such county, and all laws relating to the maintenance and operation of county roads are hereby made applicable to any project constructed or acquired hereunder in so far as they do not conflict with the provisions hereof; and each county into which the project extends may acquire necessary lands or right of ways or other property by purchase, condemnation or otherwise, under the General Laws of Texas, and the county issuing the bonds shall have such powers with respect to necessary lands or right of ways or other property in each county into which the project extends; provided that provision for the payment of the purchase price, award, or other costs may be upon such terms as may be agreed upon by the Commissioners Courts of the county issuing the bonds and the other county, and the proceeds of the bonds issued hereunder may be used for such purposes; and provided, further, that no election shall be necessary to authorize the issuance of any bonds issued hereunder payable solely from revenues, but in case no election is held, notice of intention to issue such bonds shall be given as provided in Sections 2 and 3 of the Bond and Warrant Law of 1931, as amended,² and the authority to issue such bonds shall be subject to the right of referendum provided in Section 4 of said Law. Bonds authorized to be issued under this law shall be sold in such manner, either at public or private sale, and for such price as the Commissioners Court of the county issuing the bonds may determine to be for the best interests of the county.

¹ Article 6674v.

² Article 2368a.

Bonds; Charge Only on Revenues of Project; Approval and Registration; Alternative Methods

Sec. 2. No bonds authorized pursuant to Subsection (a) of this section shall ever be a debt of the county issuing them, but shall be solely a charge upon the revenues of the project and shall never be reckoned in determining the powers of the county to issue any bonds, payable in whole or in part from taxes, for any purpose authorized by law. Each such bond payable solely from the revenues of a project 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." All bonds issued hereunder may be presented to the Attorney General for his approval in the same manner and with like effect as is provided for the approval of tax bonds issued by counties. In such case the bonds shall be registered by the State Comptroller as in the case of other county bonds. But notwithstanding any limitations in this Act or in the law which it amends, any county proceeding hereunder after this amendatory Act becomes effective may issue bonds for such purpose secured by any one of the following methods:

(a) Solely by the pledge of revenues as prescribed hereinabove in this Section and elsewhere in Chapter 304, Acts of the Regular Session of the Fiftieth Legislature, as amended;¹ or

(b) A pledge of and payable from either an ad valorem tax levied under Article 8, Section 9 of the Constitution, or an unlimited ad valorem tax authorized under Article 3, Section 52 of the Constitution and laws enacted pursuant thereto; or

(c) A designated part of the bonds to be secured solely by a pledge of revenues as provided under sub-section (a) and a designated part of the bonds to be secured by pledges of such ad valorem tax as provided under sub-section (b) of this Section; or

(d) A combination of the methods prescribed under sub-sections (a) and (b) wherein all of the bonds are to be supported and secured by such ad valorem tax with the duty imposed on the County to collect tolls for use of the facilities so long as any of the bonds are outstanding so that in the manner to be prescribed in the bond resolution or the trust indenture the amount of the tax to be collected from time to time may be reduced or abated to the extent that the revenues from the operation of the facilities are sufficient to meet the requirements for operation and maintenance and to provide funds for the bonds as prescribed in the indenture.

But no such bonds wholly or partially supported by an ad valorem tax shall be issued unless and until

they shall have been authorized at an election at which the question of their issuance shall have been submitted.

¹ This article.

Pooled Projects

Sec. 2a. Any two or more projects constructed by a county proceeding hereunder may, upon the adoption of a resolution approving the same, duly passed by the Commissioners Court, be pooled and designated as a "pooled project." Any existing project or projects may be pooled in whole or in part with any new project or projects thereof. After being so designated, such "pooled project" shall become a "project" as used in Chapter 304, Acts of the Regular Session of the Fiftieth Legislature, 1947, as amended. No project may be pooled more than once. Consistent with the resolution or order providing for the issuance of the bonds or the trust indenture securing the same, the resolution of the Commissioners Court shall set a date certain when each of the projects being authorized to be pooled shall be available for the free use of the public. Subject to the terms of any such bond resolution or trust indenture, any county proceeding hereunder is authorized to issue from time to time bonds of the county as hereinbefore authorized, including bonds which are payable either in whole or in part from the revenues of a pooled project, for the purpose of (i) paying all or any part of the cost of such pooled project or the cost of any part of such pooled project, (ii) paying the costs of constructing improvements, extensions, or enlargements to all or any part of any pooled project, or (iii) refunding any bonds then outstanding issued on account of any pooled project or any part of any pooled project, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the Commissioners Court, paying the costs of constructing improvements, extensions, and enlargements to the pooled project or to any part of any pooled project in connection with which or in connection with any part of which bonds to be refunded shall have been issued. Revenues of all or any part of such pooled project may be pledged to the payment of such bonds. Improvements, extensions, or enlargements to be paid from refunding bonds issued hereunder are not restricted to and need not be constructed on any particular part of a pooled project in connection with which bonds to be refunded may have been issued but may be constructed in whole or in part on other parts of the pooled project not covered by the bonds to be refunded. Within the discretion of the issuing county, refunding bonds issued hereunder may be issued in exchange for outstanding bonds or may be sold and the proceeds used for the purpose of redeeming outstanding bonds. Any county having previously designated a "pooled project" may from time to time, subject to

the terms of any bond resolution or trust indenture, add to, delete from, or otherwise amend the extent or component parts of any pooled project, which pooled project as so amended shall be and become a project as used in Chapter 304, Acts of the Regular Session of the Fiftieth Legislature, Regular Session, 1947, as amended.

[See Compact Edition, Volume 5 for text of 3]

Contract or Agreement for Project Construction, Acquisition, etc.; Project Feasibility Studies and Surveys

Sec. 3a. Notwithstanding anything contained herein to the contrary, any county proceeding hereunder may contract or agree with any other county, city, village, town, special district, or any other legally constituted political subdivision or agency of the State of Texas, or any combination of these, to construct, acquire, improve, operate, and maintain a project. Any such contract or agreement may provide for joint ownership of the project or for title to the project to be in any one of the contracting parties. In addition, any contracting county proceeding hereunder may issue its bonds, as authorized herein, for the purpose of paying all or any part of the cost of a project which said county is obligated to pay under any such contract or agreement. Any contract or agreement entered into under this section may contain any terms and extend for any period of time to which the parties can agree, and may provide that it will continue in effect until bonds specified in it and refunding bonds issued in lieu of those bonds are paid. If any such contract or agreement so provides, payments made thereunder shall be operating and maintenance expenses of the project, and the revenues derived from operation of such project may be pledged to such payment.

If on the effective date of this amendment any agency of the State of Texas has expended funds in the amount of \$75,000 or more for the purpose of conducting studies and surveys or making other investigations for the purpose of determining the feasibility and practicability of constructing a toll project, a county proceeding hereunder may not, without the consent of such state agency, assume sole responsibility for the construction, acquisition, improvement, operation, and maintenance of the project and thereby exclusively preempt the state agency from constructing such project; provided, however, that the foregoing restriction set forth in this sentence shall not apply to any county proceeding hereunder if such county has given the state agency written notice by certified mail of its intention to proceed with construction, acquisition, improvement, operation, and maintenance of the project and the state agency has failed or refused for any reason within six months from the date of such notice to issue its bonds in the amount required to pay the cost of the project.

Bonds; Tolls; Trust Indenture

Sec. 4. The bonds issued hereunder may be authorized by resolution at one time or from time to time. If such bonds are payable in whole or in part from the revenues to be derived from the operation of the project, it shall be the mandatory duty of the county, which duty may be executed by an operating board appointed pursuant to Section 5b hereof, to impose such tolls and charges for use of the project as will be fully sufficient, when taken with any other funds or revenues available for such purposes, to pay the maintenance and operating expenses which are charged against the revenues of the project, to pay the principal of and premium, if any, and interest on the bonds when due, to establish such reserve therefor as may be provided, and to establish an adequate fund for depreciation and replacement. As to such bonds which are payable either in whole or in part from the revenues to be derived from the operation of a project, the operating and maintenance expenses of the project which shall be charged against the revenues of the project shall include only such items as are set forth and defined in the proceedings authorizing the issuance of such bonds. The Commissioners Court shall have full discretion in fixing the details of the bonds authorized to be issued hereunder and in determining the manner of sale thereof, provided that the bonds, whether term, serial, or combination thereof, shall mature not more than forty (40) years from their date. The bonds may contain such mandatory or optional redemption provisions and may mature in such manner and at such prices as may be determined by the Commissioners Court prior to the issuance of the bonds. All bonds issued hereunder shall and are hereby declared to have all of the qualifications and incidents of negotiable instruments under the Negotiable Instruments Law of Texas. Provision may be made for registration of such bonds as to principal or interest or both. The proceeds of the bonds shall be used solely to pay the cost of the project as above defined, and shall be disbursed under such restrictions as may be provided in the bond resolution or trust indenture hereinafter mentioned, and there shall be and is hereby created and granted a lien upon such moneys until so applied in favor of the holders of the bonds or any trustee provided for in respect of such bonds. Unless otherwise provided in such resolution or indenture, if the proceeds of the bonds prove insufficient to pay the cost of the project, additional bonds may be issued to the amount of the deficit and shall be deemed to be of the same issue and entitled to payment from the same fund without preference or priority of the bonds first issued. Any surplus remaining from bond proceeds after the cost of the project has been paid in full shall be used in paying interest on and retiring bonds unless otherwise provided in the bond resolution or trust indenture. Prior to the issuance

of definitive bonds, interim bonds, with or without coupons, exchangeable for definitive bonds may be issued. Such bonds may be authorized and issued without any proceedings or the happening of any conditions or things or the publication of any proceedings or notices other than those specifically specified and required by this Act, and may be authorized and issued without regard to the requirements, restrictions, or procedural provisions contained in any other law. The resolution authorizing the bonds may provide that such bonds shall contain a recital that they are issued pursuant to this Act and such recital shall be conclusive evidence of their validity and the regularity of their issuance.

If so provided by the Commissioners Court, the bonds may be secured by a trust indenture by and between the county and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the State of Texas. Such trust indenture may pledge or assign tolls and revenues but shall not convey or mortgage the project itself or any part thereof. Either the resolution providing for the issuance of the bonds or such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the county in relation to the acquisition of properties and the construction, maintenance, operation, repair, and insurance of the project, and the custody, safeguarding, and application of all moneys. It shall be lawful for any bank or trust company in this State to act as depository of the proceeds of the bonds or revenues derived from the operation of the project and to furnish such indemnity bonds or to pledge such securities as may be required by the county. Such bond resolution or indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual rights of action of the bondholders. In addition to the foregoing, such bond resolution or trust indenture may contain such other provisions as the Commissioners Court may deem reasonable and proper for the security of the bondholders including, but without limitation, covenants prescribing all happenings or occurrences which constitute events of default and the terms and conditions upon which any or all of the bonds shall become or may be declared to be due before maturity and as to the rights, liabilities, powers and duties arising upon the breach by the county of any of its duties or obligations.

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

Operating Board

Sec. 5b. Any county proceeding hereunder, upon a determination by the Commissioners Court thereof

that a project could be developed, constructed, operated, and managed better and more efficiently by an operating board, may provide for the appointment of such an operating board. An operating board so appointed shall have and may exercise, subject to such limitations and restrictions as may be prescribed by the Commissioners Court, the same power and authority, including the power of eminent domain, as may be exercised by the Commissioners Court in regard to the development, construction, operation, and management of a project; provided, however, that an operating board appointed hereunder shall not have the power to tax or to borrow money. Without limiting the generality of the foregoing, such an operating board shall have the power and authority, subject to the restrictions and limitations prescribed by the Commissioners Court, to design the project, to acquire necessary lands or rights-of-way or other property for the project by purchase, condemnation, or otherwise, to establish and revise from time to time the rates and tolls charged for use of said project, to establish and prescribe the methods, systems, procedures, and policies for the operation, maintenance, and use of the project, and to employ consultants, attorneys, engineers, financial advisors, agents, and other employees or contractors in connection with the development, construction, operation, and management of the project.

[See Compact Edition, Volume 5 for text of 6 to 8]

Bonds for Payment of Outstanding Toll Bridge Revenue Bonds

Sec. 8a. When any county has heretofore issued or may hereafter issue bonds under authority of Chapter 304, Acts of the Regular Session of the Fiftieth Legislature, 1947, as amended payable from the revenues derived from tolls collected for the use of a project and which bonds are also payable from an unlimited tax authorized under Article III, Section 52, of the Constitution, and laws enacted pursuant thereto, such county acting through its Commissioners Court may, after being duly authorized in the manner provided by Article III, Section 52, of the Constitution, and laws enacted pursuant thereto, authorize, issue, and sell its bonds and use the proceeds therefrom in an amount sufficient to call, redeem, and pay off its outstanding tax and revenue bonds pursuant to the terms of said bonds, and thereby remove the pledge of the revenues from such facility and the covenants in connection with said bonds and the operation of said project, and make such project available for the free use of the public.

[See Compact Edition, Volume 5 for text of 9]

[Amended by Acts 1977, 65th Leg., p. 2160, ch. 861, §§ 1 to 7, eff. Aug. 29, 1977.]

Section 8 of the 1977 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. 6795c. Toll Bridges in Counties Bordering River Between Texas and Mexico
[See Compact Edition, Volume 5 for text of 1 and 2]

Tolls, Fees and Charges; Power of County to Collect;
Purpose of Tolls

Sec. 3. Any such county thus acquiring any such toll bridge or bridges or constructing a new toll bridge shall have power, through its Commissioners Court as expressed by appropriate resolution or order thereof, to fix and to enforce and collect tolls, fees and charges for the use thereof, and for the passage or transportation of persons or property, passengers, vehicles, freight and commodities, over and across such toll bridge or bridges. Such tolls, fees and charges shall be fixed from time to time by the Commissioners Court of such county and collected under its direction in accordance with the provisions and requirements of any permits or franchises granted or extended by any governmental authority in respect of or applicable thereto; and, subject to the provisions and requirements of such permits or franchises, such tolls, fees and charges shall be just and reasonable and non-discriminatory, as determined by the Commissioners Court of such county, and, subject to the provisions and requirements of any such permits and franchises, shall be sufficient to at least produce revenues adequate:

(a) To pay all expenses necessary for the maintenance and operation of such toll bridge or bridges, and to comply with the requirements and make all payments necessary under the provisions of any such permits and franchises therefor;

(b) To pay the interest on and the principal of all bonds and/or warrants issued under this Act, when and as the same shall become due and payable;

(c) To pay all sinking fund and/or reserve fund payments agreed to be made in respect of any such bonds and/or warrants, and, payable out of such revenues, when and as the same shall become due and payable; and

(d) To fulfill the terms of any agreements made with the holders of such bonds and/or warrants and/or with any person in their behalf;

(e) To recover a reasonable rate of return on invested capital;

(f) Out of the revenues which may be received in excess of those required for the purposes specified in (a), (b), (c), (d), and (e) above, the Commissioners Court of any such county may in its discretion use such excess revenues for any or all of the following:

(1) to establish a reasonable depreciation and emergency fund;

(2) to retire by purchase and cancellation or redemption any outstanding bonds or outstanding warrants issued under the authority of this Act and amendments thereto;

(3) to provide needed budgetary support to local government for legitimate public purposes and for the general welfare;

(4) to apply the same to accomplish the purposes of this Act and amendments thereto;

(g) It is the intention of this Act that the tolls, fees and charges herein provided for shall be those necessary to fulfill all obligations imposed by this Act and amendments thereto, and shall be sufficient to produce revenues to comply with the above subparagraphs (a), (b), (c), (d), (e), and (f). Nothing herein shall be construed as depriving the State of Texas or the United States of America, or other appropriate agencies having jurisdiction, of its power to regulate and control tolls and charges to be collected for such purposes, provided that the State of Texas does hereby pledge to and agree with the purchasers and successive holders of the bonds and/or warrants issued hereunder that the State will not limit or alter the power hereby vested in any such county and the Commissioners Court thereof to establish and collect such tolls and charges as will produce revenues sufficient to pay the items specified in subparagraphs (a), (b), (c), (d), (e), and (f) of this Section 3 of this Act, or exercise its powers in any way which may impair the rights or remedies of the holders of the bonds and/or warrants, or of any person acting in their behalf until the bonds and/or warrants, together with interest thereon and with interest on unpaid installments of interest and all costs and expenses in connection with any acts or proceedings by or on behalf of the bondholders and/or warrant holders and all other obligations of any such county in connection with such bonds and/or warrants are fully met and discharged.

(h) This section shall apply to international toll bridges now in existence and owned by a county or that may be acquired or controlled by a county in the future.

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; Acts 1977, 65th Leg., p. 367, ch. 180, § 2, eff. Aug. 29, 1977.]

**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 esti-

mate 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 commissioners 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. Travel Expense Reimbursements and Group Insurance Premiums for State Officers and Employees [NEW].
- 6819a-44a. Additional Compensation for Judges of the 23rd and 130th Judicial Districts [NEW].
- 6819a-45. Additional Compensation for Judges of the 103rd, 107th, 138th and 197th Judicial Districts [NEW].
- 6819a-46. Additional Compensation for Judges of the 24th and 135th Judicial Districts [NEW].
- 6819a-47. Additional Compensation for Judges of the 51st and 119th Judicial District [NEW].

Art. 6813c. Travel Expense Reimbursements and Group Insurance Premiums for State Officers and Employees

Travel expense reimbursements and the state's participation in group insurance premiums for all state officers and employees shall be in such sums or amounts as may be provided for by the legislature in the General Appropriations Act.

[Amended by Acts 1977, 65th Leg., p. 846, ch. 317, § 1, eff. May 30, 1977.]

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-31. Additional Compensation of District Court Judge of 121st Judicial District

In addition to compensation provided by law and paid by the State, each of the Commissioners Courts of Cochran, Hockley, Terry, and Yoakum Counties may pay the District Judge of the 121st Judicial District \$1,200 per annum in equal monthly installments for services rendered in performing administrative duties in the district.

[Amended by Acts 1977, 65th Leg., p. 1438, ch. 583, § 1, eff. June 15, 1977.]

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.

Sec. 2. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(14), eff. Sept. 1, 1977.

[See Compact Edition, Volume 5 for text of 3]

[Amended by Acts 1975, 64th Leg., p. 1395, ch. 539, § 1, eff. Sept. 1, 1975.]

Art. 6819a-44a. Additional Compensation for Judges of the 23rd and 130th Judicial Districts

Sec. 1. In addition to the compensation paid by the state, each of the judges of the 23rd Judicial District and the 130th Judicial District may receive from the counties, as compensation for the judicial and administrative services performed by them, a salary in an amount to make the combined yearly salary rate of the district judge from state and county sources \$1,000 less than the combined yearly salary rate from state and county sources received by the associate justices of the First Supreme Judicial District.

Sec. 2. Each salary provided in this Act may be paid by the counties composing the judicial district in accordance with the proportion that the population of each county bears to the total population of the judicial district, as shown by the last preceding federal census, and may be paid in equal monthly installments out of the general fund or any other fund available for that purpose, as determined by the commissioners court of each county.

[Acts 1977, 65th Leg., p. 1639, ch. 643, §§ 1, 2, eff. June 15, 1977.]

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. 6819a-46. Additional Compensation for Judges of the 24th and 135th Judicial Districts

Sec. 1. For services rendered to the counties and for performing administrative services, the District Judges of the 24th Judicial District and the 135th Judicial District may receive from each of the counties in the respective judicial districts, in addition to the salary paid to them by the state and any other compensation authorized to be paid to them by the counties, a reasonable sum to be set by the commissioners court, 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 respective counties. The commissioners courts shall make proper budget provisions for the payment thereof.

Sec. 2. The combined yearly salary from state and county sources of the District Judges of the 24th Judicial District and the 135th Judicial District 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 the aforementioned judicial districts are located.

[Acts 1977, 65th Leg., p. 312, ch. 146, §§ 1, 2, eff. Aug. 29, 1977.]

Art. 6819a-47. Additional Compensation for Judges of the 51st and 119th Judicial Districts

Sec. 1. In addition to the compensation provided by law and paid by the state, the commissioners court of each county in either the 51st Judicial District or the 119th Judicial District may pay each district judge having jurisdiction in the county, for services rendered to the county and for performing administrative duties, an annual salary not to exceed that county's proportionate share of \$8,000, determined by the proportion that its population bears to the total population of the judicial district as shown by the last preceding federal census.

Sec. 2. The compensation provided for in Section 1 of this Act shall be in addition to all other compensation paid or authorized to be paid the district judges in each county in either the 51st or the 119th Judicial District.

[Acts 1977, 65th Leg., p. 1819, ch. 728, §§ 1, 2, eff. June 15, 1977.]

Art. 6823a. Travel Regulations Act of 1959

[See Compact Edition, Volume 5 for text of 1]

Application of Act

Sec. 2. The provisions of this Act shall apply to all officers, heads of state agencies, state employees, and prospective state employees incurring expenses when requested to visit a state agency, department, or institution of higher education for the purpose of being interviewed and evaluated for employment. Heads of state agencies shall mean elected state officials, excluding members of the Legislature who shall receive travel reimbursement as provided by the Constitution, appointed state officials, appointed state officials whose appointment is subject to Senate confirmation, directors of legislative interim committees or boards, heads of state hospitals and special schools, and heads of state institutions of higher education.

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 advance 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 to the International Trade Development Division personnel of the Texas Industrial Commission and to 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; Acts 1977, 65th Leg., p. 1289, ch. 507, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1316, ch. 521, § 1, eff. Aug. 29, 1977.]

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 DISOLVE THIS WRIT.”

[Amended by Acts 1975, 64th Leg., p. 1246, ch. 470, § 1, eff. Sept. 1, 1975.]

**TITLE 120
SHERIFFS AND CONSTABLES**

2. CONSTABLES

Art. 6879. Repealed by Acts 1977, 65th Leg., p. 1266, ch. 488, § 2, eff. Aug. 29, 1977

See, now, art. 6879a.

Art. 6879a. Appointment of Deputies

Sec. 1. The duly elected Constable in each Justice Precinct may appoint Deputies in accordance with the provisions of Section 2 of this Act, and each and every instance said Deputy Constables shall qualify as required of Deputy Sheriffs.

[See Compact Edition, Volume 5 for text of 2 and 3]

[Amended by Acts 1977, 65th Leg., p. 1266, ch. 488, § 1, eff. Aug. 29, 1977.]

TITLE 120A

STATE AND NATIONAL DEFENSE

CIVIL DEFENSE

Article

6889-6. [Repealed].

6889-7. Disaster Act of 1975 [NEW].

CIVIL DEFENSE

Art. 6889-5. Interstate Civil Defense and Disaster Compact

[See Compact Edition, Volume 5 for text of 1]

Sec. 1a. The office of Interstate Civil Defense and Disaster Compact Administrator for Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1987.

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

[Amended by Acts 1977, 65th Leg., p. 1851, ch. 735, § 2.139, eff. Aug. 29, 1977.]

¹ Article 5429k.

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 governmen-

tal 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 interjurisdictional 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 main-

tained. 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 Services 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 (Article 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 expressly 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 insuffi-

cient 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 severe 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. Property damage insurance covering state facilities may be purchased by agencies of the state when necessary to qualify for federal disaster assistance funds. If sufficient funds are not available for the required insurance, then the agency may petition the Disaster Emergency Funding Board to purchase the insurance in the agency's behalf. The

board may expend money from the Disaster Contingency Fund to purchase the required insurance.

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; Acts 1977, 65th Leg., p. 1164, ch. 443, § 1, eff. June 15, 1977.]

TITLE 121

STOCK LAWS

CHAPTER THREE. SLAUGHTER AND SHIPMENT

Article

6910b. Payment for Livestock Purchased for Slaughter [NEW].

Art. 6908e. Slaughterers to Keep Record of Livestock Purchased or Slaughtered

Sec. 1. When used in this Act:

[See Compact Edition, Volume 5 for text of 1(a) and (b)]

(c) The term "livestock" means cattle, horses, hogs, sheep, and goats.

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

[Amended by Acts 1977, 65th Leg., p. 1649, ch. 646, § 1, eff. June 15, 1977.]

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

7009c. Application of Sunset Act [NEW].

7014h-1. Pullorum Disease and Fowl Typhoid Control [NEW].

7014f-1a. Compensation to Owners of Cattle Exposed to Bovine
Brucellosis [NEW].

Art. 7009c. Application of Sunset Act

The Texas Animal Health Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1987.

[Added by Acts 1977, 65th Leg., p. 1849, ch. 735, § 2.120, eff. Aug. 29, 1977.]

¹ Article 5429k.

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.]

Art. 7014g-1. Tick Eradication Law

Duties of Animal Health Commission

Sec. 1. It shall be the duty of the Texas Animal Health Commission to eradicate all ticks capable of carrying fever (Babesia) in the State of Texas and to protect all lands, territory, premises, cattle, horses, mules, jacks and jennets in the State of Texas from said tick and exposure thereto, under the provisions of this Act. Said Commission shall adopt necessary rules and regulations for carrying out the provisions of this Act. One of the members of said Commission shall be Chairman thereof, and he is hereby authorized to perform any and all acts which may be performed by said Commission.

Definitions

Sec. 2. The word "Tick" as used in this Act shall be construed to mean any tick capable of carrying fever (Babesia). The "Free Area" is hereby defined as being composed of those counties and parts of counties in Texas which the Texas Animal Health Commission may designate as the Free Area; the "Tick Eradication Area" is composed of those counties and parts of counties designated for tick eradication by the Commission; the "Inactive Quarantined Area" is composed of those counties and parts of counties which are designated as such by the Commission under provisions of this Act. The Texas Animal Health Commission shall promulgate rules defining and classifying "exposed animals" and "exposed premises." Whenever a tick is found upon any cattle, horses, mules, jacks, and jennets, every head of such live stock in said herd or which are located in the same pasture, pen, lot or in the same enclosure or upon the same range or that shall thereafter be located therein or thereupon, shall be classed as tick infested and said pasture, pen, lot, enclosure or open range in which and upon which they were located shall be classed as tick infested. Said classification to continue until changed by said Commission under the provisions of this Act. No premises, place or live stock shall be considered as free from exposure in the Tick Eradication Area unless the Commission has officially classed the same as free from exposure and filed in the office of the supervising inspector of the county wherein the same are located a copy of the order of said Commission making said classification, or unless the said supervising inspector under authority of said commission has made said classification in writing and filed the same in the office of said supervising inspector in said county. In this Act, "dip," "dipped," and "dipping" refer to submerging livestock in a vat, spraying livestock, or any other sanitary treatment of livestock as may be determined by the Commission.

Inactive Quarantined Area; Designation for Tick Eradication

Sec. 3. It shall be unlawful, after the taking effect of this Act, for any cattle, horses, mules, jacks, or jennets to be moved or permitted to move from or within the Inactive Quarantine Area except in accordance with the rules of the Texas Animal Health Commission. The Commission is hereby authorized to designate for tick eradication any county or part of a county that may have ticks therein without an election being held for said purpose, or said Commission may designate any part of any of said counties for said purpose. Whenever the Commission designates any county or part of a county for tick eradication, the designation shall become and be in effect on and after date prescribed in it. A brief notice of the designation shall either be published in a newspaper in the county wherein tick

eradication is to be conducted or posted at the court house door thereof. If only a part of a county is designated for tick eradication, said notice may be published in any newspaper in any part of said county, or posted at the court house door, whether or not said court house is located in said part of county. Said notice shall be either published or posted at least ten full days before the date the designation is to become effective. In the event the same is not published or posted ten full days before the effective date prescribed, or in the event said prescribed date has already passed, then the designation shall become effective upon the expiration of ten full days from the date of said publishing or posting. The expense of the publishing or posting of such notices shall be paid by the county in which the designation is effective. The Commission is hereby authorized to transfer counties and parts of counties from any area to another area whenever the same is deemed advisable or necessary and to establish necessary quarantines on lands, premises and live stock.

Designation for Tick Eradication to Declare Quarantine; Operation and Effect

Sec. 4. Whenever any county, part of county, district or territory is designated for tick eradication by the Texas Animal Health Commission, the designation shall contain a provision quarantining said county, part of county, district or territory, and the effect of such quarantine shall be to quarantine said county, part of county, district or territory and all lands, pastures, pens, lots, premises, and all cattle, horses, mules, jacks and jennets of each individual owner, lessee, renter, tenant and occupant in the designated county, part of county, district or territory without specifically designating said land, pasture, pen, lot and premises, and after said quarantine becomes effective it shall be unlawful for any cattle, horses, mules, jacks or jennets located therein or which may thereafter be located therein during the existence of said quarantine, to be moved or permitted to move from the land, pastures, pen, lot or premises of an owner, lessee, renter, tenant or occupant, whether enclosed or not, onto or into or through any other land owned or leased or rented, tenanted or occupied or controlled by any other person, firm or corporation or onto any open range, public street, public road or any thoroughfare, without a permit or certificate from an authorized inspector of the Commission. It shall be unlawful for any owner or caretaker of cattle, horses, mules, jacks or jennets located in said quarantined territory to move or permit or allow the movement of said live stock without said permit or certificate from any pasture, pen, lot, or other enclosure of which he is the owner, lessee, renter, tenant or occupant, or from any open range or street, road or thoroughfare or from land which he does not own or control into any other pasture, pen, lot, enclosure or other land of which he is the owner or caretaker, or of which he

is in control, if said live stock are subject to dipping under the provisions of this Act, and the pen, lot pasture, enclosure or land into which he moves or allows or permits said movement is classed in the records of the supervising inspector of said county as free of ticks or has been released from quarantine by said Commission or if said live stock are subject to dipping but are not being dipped under the provisions of this Act in the conduct of regular systematic tick eradication by said Commission, and are so moved or allowed or permitted to so move into a pasture, pen, lot, enclosure or other land owned or controlled by said owner or caretaker of said live stock where tick eradication is being conducted, under the provisions of this Act, or into a pasture or other enclosure owned or controlled by said owner or caretaker of said live stock, which said pasture or enclosure is vacated for the purpose of tick eradication by vacation methods under the direction of said Commission. Owners and caretakers are hereby permitted to move and allow the movement of cattle, horses, mules, jacks and jennets to and from dipping vats for the purpose of dipping said live stock on any regular dipping date at said vat to which they are to be moved, or on any other dipping date designated by the inspector in charge of said dipping vat, provided they are moved in accordance with the rules and regulations of the Commission. If they are moved otherwise than as prescribed in said rules and regulations the same will constitute a violation of the quarantine. The term "other land" means land which is separated from the land from which the movement is made by a fence or other dividing line or by land of another person, firm or corporation.

[See Compact Edition, Volume 5 for text of 5 to 7]

Commission to Prescribe Dipping Materials

Sec. 8. (a) The Texas Animal Health Commission shall prescribe in its rules and regulations the dipping materials to be used in the dipping of cattle, horses, mules, jacks and jennets, under the provisions of this Act, and the same shall be recognized official dipping materials for the dipping of such livestock, under the provisions of this Act, and no other dipping materials shall be used for such purposes.

(b) In the trial of any case in connection with the dipping or failure to dip livestock under any provision of this Act, it shall be presumed that the dipping vat in question contained a sufficient amount of said dipping solution for dipping said livestock and that said dipping solution had been properly tested, or that said dipping solution could have and would have been put into said vat and tested if the owner or caretaker had brought his livestock to said dipping vat for the purpose of dipping; and it shall

not be necessary for the state to allege and prove in any criminal prosecution for failure to dip livestock under any provision of this Act, that said vat contained said dipping solution. If it becomes necessary in any court proceeding to prove the test of said dipping solution, it shall only be necessary to prove that the dipping material used was one of the official dipping materials prescribed in the rules and regulations of the Texas Animal Health Commission, and that the inspector tested said dipping solution in accordance with the rules and regulations of the Texas Animal Health Commission.

[See Compact Edition, Volume 5 for text of 9]

Dipping Material Furnished by State or State or Federal Agencies;
Directions for Dipping

Sec. 10. The official dipping material prescribed in the rules and regulations of the Texas Animal Health Commission shall be furnished by the State, State agencies, or agencies of the United States government. The said Commission and its Chairman are hereby authorized to direct owners, part owners and caretakers of live stock which are subject to dipping under the provisions of this Act, to dip said live stock in said official dipping material. Said direction to be in writing and signed either by said Commission or said Chairman, which signature may be written or stamped thereon, under authority of either the Commission or its Chairman, and the same shall be dated and shall direct said person, firm or corporation to dip said live stock under the supervision of an inspector of said Commission at a designated dipping vat, and stating the dates on which said live stock are to be dipped, and the said direction may contain as many dipping dates as, in the discretion of said Commission, may be necessary for eradicating said infection or exposure from said live stock and the premises upon which they are located. Said direction shall further direct said person, firm or corporation to dip all other cattle, horses, mules, jacks and jennets of which he at any time may be the owner, part owner or caretaker, which may at any time be located upon the premises described in said written dipping direction, during the period of time covered by said written dipping direction. Said dipping direction shall further state that unless said person dips said live stock on the dipping dates therein prescribed the same will be done at said person, firm or corporation's expense, under the provisions of this Act authorizing peace officers to deputize helpers and dip said live stock under the supervision of an inspector. All cattle, horses, mules, jacks and jennets located in the Tick Eradication Area or in the Free Area shall be subject to dipping under the provision of this Act if they are infested with any tick, as the term "infested" is defined in this Act, or if they are exposed or have been exposed to said tick at any time within nine months next preceding the date of the issuance of

said dipping direction. When such live stock have been in or upon any pasture, pen, lot, enclosure, land or other place and it should be ascertained by said Commission either before or after said live stock are moved therefrom that said land, pasture, pen, place or enclosure is tick infested or exposed, the said Commission shall class said live stock as exposed and said Commission is authorized to direct the dipping of said live stock which have moved therefrom, unless said Commission definitely ascertains that said infection and exposure occurred after said live stock moved therefrom and that they did not become infested or exposed while thereon or therein. Provided that where a dipping direction is issued before the expiration of nine months, as provided herein, additional dipping directions may be issued at any time thereafter if said live stock and the said premises are not freed of all ticks and exposure thereto before the expiration of the dates prescribed in said first dipping directions. The dipping directions provided in this Act shall be delivered to said person at least twelve days before the first dipping date prescribed therein and shall direct said person, firm or corporation to dip said live stock at intervals of every fourteen days, allowing thirteen full days to intervene between dipping days, and no part of any dipping day shall be included as a part of the said thirteen days interval. Provided further that the Commission may, at its discretion, direct the dipping of live stock with a longer interval than said thirteen days between dipping days. Provided that the date of delivery of said dipping direction and the date of first dipping prescribed therein shall not be included as a part of said twelve days notice, but there shall be at least twelve full days exclusive of said date of delivery and said first dipping date; and provided further that in the event said twelve days do not intervene between said date of delivery and said first dipping date or if said first dipping date or other dipping dates contained in said dipping direction have passed at the time of the delivery of said written dipping direction, it shall be the duty of said owner, part owner, or caretaker to begin dipping on the first dipping date after the expiration of said twelve full days, and to thereafter dip said live stock on all succeeding dipping dates prescribed in said written dipping direction. It shall not be necessary for written dipping directions to describe the premises or land by field notes or metes and bounds or other measures, but it will be sufficient if the same contains such reasonable description as will inform the person, firm or corporation to whom the same are directed what premises or land are covered thereby.

Compliance With Dipping Directions

Sec. 11. Whenever the Texas Animal Health Commission or its Chairman shall issue dipping directions in writing to any owner, part owner or

caretaker of any cattle, horses, mules, jacks or jennets which are located in the Tick Eradication Area or in the Free Area, and which said live stock are infested with any tick or are exposed to said tick or have been exposed to said tick at any time during the nine months next preceding the date of the issuance of the said written dipping directions and said written dipping directions are served upon said owner, part owner or caretaker, as provided in this Act, shall be the duty of said owner, part owner or caretaker to dip said live stock as directed in said written dipping direction and also in addition thereto it shall be the duty of said owner, part owner, or caretaker to dip all other cattle, horses, mules, jacks, and jennets of which he may at any time be owner, part owner, or caretaker which may be located upon the premises referred to in said written dipping direction during any of the period of time covered by said written dipping direction. All of said dippings to be administered as directed in said written dipping direction. Any owner, part owner, or caretaker of any cattle, horses, mules, jacks or jennets who fails or refuses, after the expiration of the twelve days period of notice provided in this Act, to dip said livestock as prescribed in said dipping directions, on any date prescribed therein during the hours prescribed therein under the supervision of an inspector of the Commission in an official dipping solution prescribed in the rules and regulations of the Commission under the provisions of this Act, in the dipping vat designated in said written dipping direction shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than Twenty-five Dollars nor more than Two Hundred Dollars. The terms "caretaker," "exposed," and "infested" shall be construed as elsewhere defined or explained in this Act.

[See Compact Edition, Volume 5 for text of 12 to 14]

Dipping by Peace Officers on Refusal of Owner to Dip; Lien for Securing Payment of Costs

Sec. 15. Upon the failure of any owner, part owner or caretaker to dip any live stock on any date, as directed in writing by the Texas Animal Health Commission under the provisions of this Act, at any time and place required of said owner or caretaker in any written dipping direction issued by the Commission and served upon him, or where such owner, part owner or caretaker, prior to any dipping date specified in said dipping direction, states that he does not intend to dip his said live stock, it shall be the duty of the inspector in charge of tick eradication in said county to notify the sheriff or any constable in said county of said fact, and it shall thereupon be the duty of said officer to deputize a sufficient number of helpers to be designated by the supervising inspector in charge of said county to go upon the premises where said live stock are located

and gather said live stock and dip them under the supervision of an inspector of the Commission, in accordance with said written direction, and to continue dipping them on all the succeeding dipping dates therein prescribed, unless and until said owner, part owner or caretaker begins and continues said dipping according to said direction. A lien is hereby given said peace officers upon all such live stock as may be dipped under these provisions for the purpose of securing the payment of all costs of handling the animals, and also for the payment of an additional sum to cover expenses of holding, feeding and watering said live stock during the time said officers held them in their possession, and said officers are authorized to retain in their possession and sell at public sale to the highest bidder, at any time at the courthouse door of said county within sixty days after said dipping, a sufficient number of said live stock for paying the total sum for live stock dipped and said expense of holding, feeding and watering said live stock, by posting a written notice at the courthouse door at least five days in advance of said sale. The residue, if any, to be paid to owner of said live stock or paid to the County Treasurer, subject to the order of the owner. Each date on which said live stock are dipped under the provisions of this Section shall authorize the collection of said total sum for said expenses.

[See Compact Edition, Volume 5 for text of 16 and 17]

Suit for Permanent or Temporary Relief to Compel Compliance with Dipping Directions; Hearing

Sec. 18. The Texas Animal Health Commission or any resident or residents of any county or part of county in which tick eradication is being conducted may bring suit for permanent or temporary relief to compel owners, part owners or caretakers to dip their cattle, horses, mules, jacks and jennets under the provisions of this Act after said owner, part owner or caretaker has failed or refused to dip them or is threatening or has threatened to refuse or fail to dip them, and the court may, in term time or vacation upon notice to defendant, hear and determine same and if the court finds that said owner, part owner or caretaker has been served with a written dipping direction from the Commission to dip said live stock and that said live stock are subject to dipping, and that the material allegations in plaintiff's petition are true, the court shall enter its order commanding said owner or caretaker to dip said live stock, designating the time and place of said dippings, as specified in the written dipping direction of the Commission, and upon failure of said person to dip said live stock at any time or place so ordered in accordance with said written dipping direction or in accordance with said order of said court, he shall be held liable for contempt of court and punished accordingly, and the court shall order

the sheriff or a deputy sheriff to deputize a sufficient number of helpers to dip said live stock in accordance with the court's order, and the expense of said dipping and employment of said sheriff or deputies and helpers shall be taxed as cost against the defendant in said suit, and lien is hereby provided in favor of sheriffs and their deputies and helpers on all such live stock dipped in accordance with said court order, for the purpose of securing the payment of said expenses and costs. After the dipping of live stock under said court order, the sheriff or deputy shall file a sworn statement with the Clerk of the District Court showing the number and description of the said live stock dipped, and the court shall order a foreclosure of the lien upon said live stock or upon such number of head as may be necessary for the payment of said expenses and costs, which live stock shall be sold as under execution. The said sworn statement may be filed after each dipping and said foreclosure made after each respective dipping, or the said sheriff or deputy may wait until a number of dippings have been administered and file a sworn statement covering each dipping and secure a foreclosure on all of them in the aggregate. The said right to file said written sworn statement and secure foreclosure of said lien shall exist for a period of twelve months after each dipping. The residue, if any, after the payment of said expenses and costs, shall be paid to the Clerk of the Court in which said suit is pending, subject to the order of the owner of said live stock. In any court proceeding under this Act, for the foreclosure of any lien authorized by this Act, the residue, if any, after the payment of said expenses and costs, shall likewise be paid to the Clerk of the Court, subject to the order of the owner of said live stock.

Dipping by Officers of Animals Running at Large Without Known Owner; Lien to Defray Expenses

Sec. 19. Whenever any inspector ascertains that there are any cattle, horses, mules, jacks or jennets in any county or part of county in which tick eradication is being conducted, under the provisions of this Act, running at large or upon the open range, for which he can locate no owner or caretaker, said inspector shall call upon the sheriff or any constable in said county to deputize helpers and to seize said live stock and dip them under supervision of an inspector of the Texas Animal Health Commission and make such other disposition of said live stock as may be necessary for the purpose of tick eradication, including impounding them at such place as may be designated by said inspector, and the said officer is hereby given a lien on said live stock to defray the expenses of said gathering, dipping and impounding, feeding, watering and caring for said live stock, and to pay such helpers as may be necessary in carrying out the provisions of this Act.

[See Compact Edition, Volume 5 for text of 20]

Transportation of Animals From Quarantined Areas; Penalties

Sec. 21. Any person, firm or corporation or transportation company who shall ship or drive or drift or lead or haul or truck or otherwise move any cattle, horses, mules, jacks, or jennets from any premises, pasture, pen, lot, yard, stock yard farm, ranch, land or enclosure, or from any county or part of county or territory which is under quarantine by virtue of this Act or by any order of the Texas Animal Health Commission because of tick infestation or exposure as provided for in this Act, in violation of said quarantine, without a written permit or certificate of an inspector of the Commission or an inspector of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or who shall so move into the State of Texas from any state, nation, territory or area under quarantine for tick infestation or exposure by the said Commission, or by the United States Animal and Plant Health Inspection Service or by the Live Stock Sanitary authorities of the state or nation or territory from which they are moved, without a certificate from an inspector of said United States Animal and Plant Health Inspection Service, or that having such permit or certificate from an inspector of said Commission shall ship or drive or drift or lead or haul or truck or otherwise move said live stock from said quarantined premises, pasture, pen, lot, yard, stock yard, farm, ranch, land or enclosure, territory, county or part of county to any other place than the place designated by said inspector in said written certificates or permit shall be fined not less than \$100 per head nor more than \$500 per head for each head of such live stock so shipped or drifted or driven or hauled or led or otherwise moved in violation of said quarantine. Any owner, part owner or caretaker of such live stock who shall permit or allow such live stock to drift or to be drifted, shipped, led, hauled or otherwise moved in violation hereof without said permit or certificate shall be deemed guilty of violating this provision the same as if he had personally drifted or driven or shipped or led or hauled or trucked or otherwise moved said live stock. Any person in charge of any movement of live stock upon which said certificate or permit is required, or who is in charge of the vehicle, truck, boat or other conveyance which hauls said live stock, who fails to have in his possession said certificate or permit from point of origin to destination, or to exhibit to an inspector of said Commission, when demanded, a certificate or permit from an inspector, as provided herein, or any railroad company, express company or other transportation company that fails to attach and keep attached said permit or certificate to the shipping papers accompanying said movement from point of origin to destination, or to exhibit to an inspector of

said Commission, when demanded, a certificate or permit from an inspector, as provided herein, shall be punished as herein provided for violating the quarantine. Railroads and other transportation companies shall also be deemed as having violated this provision, subject to said penalty for each head of cattle, horses, mules, jacks or jennets which they permit to enter any stock pens under their control in the Tick Eradication Area without a written certificate or permit from an inspector of the Commission or of the Animal and Plant Health Inspection Service, United States Department of Agriculture.

Disinfecting of Means of Conveyance After Shipment; Penalty

Sec. 22. It shall be the duty of all railroad and transportation companies and persons operating other means of conveyance to clean and disinfect all cars or other means of conveyance into which any cattle, horses, mules, jacks or jennets have been loaded after the removal of said live stock, unless said live stock are clean and tick-free and are not and have not been subjected to exposure to any tick. The Texas Animal Health Commission shall promulgate rules concerning the cleaning and disinfecting of all means of conveyance. Any railroad or transportation company or person operating another means of conveyance that shall fail or refuse to clean and disinfect cars or other means of conveyance in accordance with the rules of the Commission shall be fined not less than Fifty Dollars nor more than One Hundred Dollars for each car or other means of conveyance which they shall fail or refuse to clean and disinfect. Each day upon which said failure or refusal shall occur shall constitute a separate offense.

[See Compact Edition, Volume 5 for text of 23 to 26]

Rules and Regulations

Sec. 27. The Texas Animal Health Commission is hereby directed to adopt rules and regulations providing the conditions and manner and method of handling and moving live stock into, within and from the Tick Eradication Area and local premises and territory therein and the movement and handling of live stock into, within, and from quarantined premises and territory in the Free Area and the handling and movement of live stock into the released part of the Free Area from other areas and into, within, and from the Inactive Quarantine Area. Certificates and permits shall be issued by inspectors only as provided in said rules and regulations showing said live stock to be free of ticks; and when destined to the Free Area or other counties in the Tick Eradication Area or to premises or territory in the same county, which premises or territory are classed by the supervising inspector of the county in his official records as being free from ticks and

exposure, said live stock shall also be certified to as being free from exposure and shall move to said destination without exposure. The Texas Animal Health Commission may adopt rules and regulations for tests, immunizations, treatment, certification, or marking or branding of any livestock moving into this state from other states or foreign countries.

[See Compact Edition, Volume 5 for text of 28]

Injunction Suit

Sec. 29. The Texas Animal Health Commission or any resident of this State may bring injunction suit to compel the compliance with any provision of this Act or restrain any threatened violation of same; and any resident of any county in this State may bring Mandamus proceedings against the County Commissioners Court of said county to compel a compliance with any duty of Commissioners' Courts prescribed in this Act. Said injunctions and Mandamus proceedings may be heard in vacation or term time, and if heard in vacation the same may be as fully disposed of and all issues determined in vacation the same as in term time. Notice of said hearing to the opposite party may be given under the direction of the Court, if in the opinion of the Court the ends of Justice require such a notice.

[See Compact Edition, Volume 5 for text of 30 and 31]

Restrictions on Removal of Materials from Quarantined Areas

Sec. 32. The Texas Animal Health Commission may establish necessary quarantines and restrictions on the movement of hay, hides, carcasses, or any other commodity capable of carrying ticks from quarantined areas and premises and restrict the use of sand for bedding stock conveyances except from known tick-free sand pits and regulating the removal and handling of all refuse matter from quarantined stock yards, stock pens and other quarantined places and regulating the handling or removal of dead or injured live stock in transit. Any person, firm or corporation who shall move any commodity in violation thereof or who shall use any sand for bedding any conveyance in violation hereof or who shall remove or handle any refuse matter from any quarantined stock yards, stock pens or other quarantined place, or who shall remove from any conveyance or other place or handle any dead or injured live stock in violation of said quarantine or restrictions shall be fined not less than Fifty Dollars nor more than Two Hundred Dollars.

Written Instruments Issued by Commission as Evidence; Identification in Complaint or Indictment Without Setting Out Copies

Sec. 33. Copies of written instruments issued by the Texas Animal Health Commission or its Chairman shall be admissible as evidence in any court of this State when said copies are certified by the Chairman of said Commission. In prosecutions for

violating any provisions of this Act, it shall not be necessary for the State to include in complaints or informations or indictments verbatim copies of any written instruments or proclamations, but it shall only be necessary to allege the issuance thereof with necessary allegation of dates to identify same. In the trial of any case, civil or criminal, in which any of the aforesaid written instruments or proclamations are to be introduced in evidence, it shall not be necessary to file the same with the papers of the cause, nor to give notice to the opposite party. All quarantines established by this Act or by the Commission under the provisions of this Act may be released by the said Commission in writing whenever the same is deemed necessary or advisable.

[See Compact Edition, Volume 5 for text of 34 to 37]

Cooperative Agreements Authorized

Sec. 37a. The Texas Animal Health Commission may enter into cooperative agreements with other state agencies or with agencies of the federal government in order to carry out the purposes of this Act.

[Amended by Acts 1977, 65th Leg., p. 1664, ch. 658, §§ 1 to 17, eff. Aug. 29, 1977.]

Section 18 of the 1977 amendatory act provided:

"All quarantines, Free Areas, Inactive Quarantine Areas, and Tick Eradication Areas established by the Texas Animal Health Commission or by proclamation of the governor and in effect on the effective date of this Act shall continue in full force and effect."

Art. 7014k-1. Pullorum Disease and Fowl Typhoid Control

Definitions

Sec. 1. In this Act:

- (1) "Commission" means the Texas Animal Health Commission.
- (2) "Experiment station" means the Texas Agricultural Experiment Station.
- (3) "Poultry" means chickens, turkeys, game birds of all ages, and other domestic fowl.
- (4) "Hatchery" means any enterprise that operates equipment for the hatching of eggs.
- (5) "Flock" means poultry and their eggs.

Control and Eradication Program

Sec. 2. The experiment station shall promulgate and administer a program to control and eradicate pullorum disease and fowl typhoid, with standards at least as stringent as those specified in the National Poultry Improvement Plan (9 C.F.R. Part 445, 7 U.S.C. Section 429).

Administration of Program; Search Warrant for Inspection of Premises

Sec. 3. (a) In administering the program, the experiment station may:

- (1) require the registration of all hatcheries and hatchery supply flocks;

- (2) examine, test, monitor, and collect samples from any flock, whether a hatchery supply flock or not, if the flock is suspected of being infected or a potential source of infection;

- (3) examine, test, monitor, and collect samples from any hatchery supply flock;

- (4) enter premises where flocks are kept or eggs are hatched as necessary to carry out the administration of this Act; and

- (5) promulgate rules necessary to the control and eradication of pullorum disease and fowl typhoid.

(b) If a person conducting an inspection of premises under Subdivision (4) of Subsection (a) of this section desires to be accompanied by a peace officer, he may apply to any magistrate in the county where the property is located for the issuance of a search warrant. In applying for the warrant, he shall describe the premises or place to be entered and shall by oath or affirmation give evidence of probable cause to believe that entry is necessary for the control or eradication of pullorum disease or fowl typhoid. The application for the warrant and the warrant itself need only describe the property or premises in terms sufficient to enable the owner or caretaker to know what property is referred to in the documents. The warrant entitles the person to whom it is issued to be accompanied by a peace officer and by assistants. The issuing magistrate may not charge court costs or other fees for the issuance of this warrant.

Quarantine

Sec. 4. (a) If the experiment station determines that any part of a flock is infected, it shall certify that information to the commission, and the commission shall verify the infection and immediately quarantine part or all of the flock. The commission shall give notice of the quarantine in the same manner as provided by law for the quarantine of other livestock and fowl. The commission shall also order a cessation in the sale, movement, or exhibition of any quarantined poultry or eggs and may seek an injunction to enforce any order concerning infected flocks.

(b) A quarantined flock shall be disposed of in a manner prescribed by the commission. If disposal involves movement to a state or federally inspected poultry processing establishment, the commission shall issue a certificate to accompany the flock. When the flock is disposed of and other measures necessary to the control and eradication of pullorum disease and fowl typhoid are taken, the commission shall remove the quarantine.

(c) The owner of a quarantined flock is entitled to a retesting of his flock before its disposal.

Public Exhibitions

Sec. 5. All poultry entered in public exhibition shall originate from flocks or hatcheries free of pullorum disease and fowl typhoid or have a negative pullorum-typhoid test within 90 days before exhibition. Chickens or turkeys entered in public exhibition shall be accompanied by a certificate of purchase from the hatchery.

Assistance of Flock Owner

Sec. 6. The owner of a flock shall assist the experiment station and the commission in handling the poultry and shall pen and present them on request.

Fee

Sec. 7. Neither the experiment station nor the commission may charge a fee for any testing or laboratory examination provided for under this Act.

Penalty

Sec. 8. Any person who refuses to comply with an order of the commission or experiment station concerning infected flocks or who refuses to admit a person with a search warrant obtained as provided in Section 2 of this Act is guilty of a Class C misdemeanor. Each day of refusal constitutes a separate offense.

[Acts 1977, 65th Leg., p. 364, ch. 179, §§ 1 to 8, eff. Aug. 29, 1977.]

TITLE 123

TIMBER

Arts. 7360 to 7363b. Repeal by Acts 1977, 65th Leg., p. 2689, ch. 871, § 2, eff. Sept. 1, 1977.

Repeal

This Title 123 was repealed by art. I, § 2(a)(3) of Acts 1977, 65th Leg., p. 2689, ch. 871, enacting the National Resources Code, effective September 1, 1977.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Former arts. 7361a, 7362a, 7363.1, and 7363b, derived from Acts 1879, p. 81, were transferred from Vernon's Ann.P.C. (1975) arts. 1385 to 1388, respectively, by authority of § 5 of Acts 1973, 63rd Leg., p. 995, ch. 399.

TITLE 125A

TRUSTS AND TRUSTEES

PENSION TRUSTS

Article

7425a-3. Authority of Fiduciaries and Custodians Regarding Certain Securities [NEW].

7425d-1. Death Benefits Under Employees' Trusts [NEW].

IN GENERAL

Art. 7425a-3. Authority of Fiduciaries and Custodians Regarding Certain Securities

Sec. 1. In this Act:

(1) "Fiduciary" has the meaning given it in Section 1, Chapter 1002, Acts of the 62nd Legislature, Regular Session, 1971 (Article 7425a-2, Vernon's Texas Civil Statutes), and includes a state or national bank acting in a fiduciary capacity.

(2) "Clearing corporation" has the meaning given it in Section 8.102, Business and Commerce Code, as amended.

Sec. 2. In the absence of contrary or limiting provisions in the court order or decree appointing a fiduciary, or in a subsequent order or decree, or in the will, deed, or other instrument appointing a fiduciary, any fiduciary holding securities in its fiduciary capacity, and any bank, trust company, or private banker holding securities as a custodian for a fiduciary or as a managing agent or custodian, is authorized if a member of the Federal Reserve System to deposit, or arrange for the deposit if not a member of the Federal Reserve System, with the Federal Reserve Bank of Dallas, of any securities the principal and interest of which the United States or any department, agency, or instrumentality of the United States has agreed to pay or has guaranteed payment. A bank, trust company, or private banker so depositing securities with the Federal Reserve Bank of Dallas shall be subject to such rules with respect to making and maintenance of the deposit as, in the case of state chartered or private banking institutions, the Finance Commission of Texas, and, in the case of national banking associations, the Comptroller of the Currency, may from time to time issue. The records of the fiduciary, bank, trust company, or private banker shall at all times show the ownership of securities held in such an account.

The Federal Reserve Bank of Dallas may apply book entry procedures to the securities in such an account, whereby the ownership of and other interests in the securities may be transferred by entries on the books of the Federal Reserve Bank of Dallas without physical delivery of the securities. A bank, trust company, or private banker acting as custodian for a fiduciary, on demand by the fiduciary, shall certify in writing to the fiduciary the securities so deposited by the bank, trust company, or private banker with the Federal Reserve Bank. Any fiduciary or any bank, trust company, or private banker acting as fiduciary, custodian, custodian for a fiduciary, or managing agent, on demand by any party to its accounting or on demand by the attorney for the party, shall certify in writing to the party the securities so deposited by the bank, trust company, or private banker with the Federal Reserve Bank.

Sec. 3. (a) In the absence of contrary or limiting provisions in the court order or decree appointing a fiduciary, or in a subsequent order or decree, or in the will, deed, or other instrument appointing a fiduciary, any fiduciary holding securities in its fiduciary capacity, and any bank, trust company, or private banker holding securities as custodian, custodian for a fiduciary, or managing agent is authorized to deposit or arrange for the deposit, either in this state or elsewhere, of such securities in a clearing corporation, irrespective of whether the clearing corporation is domiciled, located, has any office or place of business, or is licensed or authorized to do business in this state. When the securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation with any other securities deposited in the clearing corporation by any person, regardless of the ownership of the securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of the fiduciary and the records of the bank, trust company, or private banker acting as a custodian for a fiduciary, managing agent, or custodian shall at all times show the name of the party for whose account the securities are so deposited. Ownership of, and other interests in, the securities may be transferred by entries on the books of the clearing corporation

without physical delivery of certificates representing the securities. A bank, trust company, or private banker so depositing securities pursuant to this Act shall be subject to such rules as, in the case of state chartered or private banking institutions, the Finance Commission of Texas, and, in the case of national banking associations, the Comptroller of the Currency, may from time to time issue. A bank, trust company, or private banker acting as custodian for a fiduciary, on demand by the fiduciary, shall certify in writing to the fiduciary the securities so deposited by the bank, trust company, or private banker in the clearing corporation for the account of the fiduciary. Any fiduciary or any bank, trust company, or private banker acting as fiduciary, custodian for a fiduciary, custodian, or managing agent, on demand by any party to its accounting or on demand by the attorney for the party, shall certify in writing to the party the securities deposited by the fiduciary, bank, trust company, or private banker with the clearing corporation.

(b) As between the fiduciary and the beneficial owner of securities deposited by the fiduciary in a clearing corporation, the fiduciary is liable for any loss occasioned by the acts or omissions of the clearing corporation, but nothing in this Act affects the liabilities as between the fiduciary and the clearing corporation.

Sec. 4. (a) This Act applies to any fiduciary holding securities in its fiduciary capacity and to any bank, trust company, or private banker holding securities as fiduciary, custodian for a fiduciary, custodian, or managing agent, acting on the effective date of this Act or thereafter, regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not the fiduciary, custodian for a fiduciary, managing agent, or custodian owns capital stock of the clearing corporation.

(b) This Act does not apply to securities held by any fiduciary, bank, trust company, or private banker on behalf of any domestic insurance company, unless the prior express approval of the State Board of Insurance is obtained. The State Board of Insurance may grant that approval generally to all domestic insurance companies or specifically to individual domestic insurance companies on a case-by-case basis.

[Acts 1977, 65th Leg., p. 852, ch. 320, §§ 1 to 4, eff. May 30, 1977.]

UNIFORM COMMON TRUST FUND ACT

Art. 7425b-48. Uniform Common Trust Fund Act

Sec. 1. Establishment of common trust funds.
(a) Any bank or trust company qualified to act as

fiduciary in this State may establish common trust funds for the purpose of furnishing investments to itself as fiduciary, including itself as custodian under the Uniform Gifts to Minors Act, as amended (Article 5923-101, Vernon's Texas Civil Statutes), or to itself and others, as cofiduciaries; and may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciaries to such investment. Any bank or trust company which is a member of an affiliated group, as defined in Section 1504 of the Internal Revenue Code of 1954, as amended (26 U.S.C. Section 1504), with a bank or trust company maintaining common trust funds may participate in one or more of those funds as though they were maintained by the participating bank or trust company.

(b) A common trust fund includes a fund qualified for exemption from federal income taxation as a common trust fund and maintained exclusively for eligible fiduciary accounts and also includes a fund consisting solely of assets of retirement, pension, profit sharing, stock-bonus, and other employees' trusts that are exempt from federal income taxation.

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

[Amended by Acts 1977, 65th Leg., p. 627, ch. 232, § 3, eff. Aug. 29, 1977.]

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 127

VETERINARY MEDICINE AND SURGERY

Article

7465c. Responsibility of Veterinarian Toward Animals in His Care
[NEW].

Art. 7465a. Veterinary Licensing Act

[See Compact Edition, Volume 5 for text of 1
to 4]

State Board of Veterinary Medical Examiners

Sec. 5.

[See Compact Edition, Volume 5 for text of
5(a) to (f)]

(g) The State Board of Veterinary Medical Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 6
to 18]

Fees

Sec. 19. Applicants for examinations shall pay to the Board a fee of not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100), and an applicant for license under the reciprocal provisions of this Act shall pay to the Board a fee of not less than One Hundred Dollars (\$100) nor more than Two Hundred Dollars (\$200) at the time of application to the Board for such license. Licensees shall pay to the Board for annual renewal of licenses, a fee of not less than Ten Dollars (\$10), nor more than Sixty Dollars (\$60), as determined by the Board, based upon the needs of the Board, and a licensee whose license has been lost or destroyed shall be issued a duplicate license after application and upon payment of a fee of not less than Twenty Dollars (\$20) nor more than Forty Dollars (\$40). The amount of all fees provided for in this section shall be determined by the Board within the ranges specified in this section.

Veterinary Fund

Sec. 20. All fees collected by the Board under this Act shall be placed in the State Treasury every thirty (30) days, as collected, to the credit of a special fund to be known as the "Veterinary Fund,"

² West's Tex.Stats. & Codes '77 Supp.—31

and all expenditures from this fund shall be on order of the Board, on warrants issued by the State Comptroller for the purposes and in the amounts fixed by the Legislature in appropriation bills. On August 31st of each year, all money in excess of One Hundred Thousand Dollars (\$100,000) remaining in said "Veterinary Fund" shall revert to the General Revenue Fund of the State Treasury.

[See Compact Edition, Volume 5 for text of 21]

[Amended by Acts 1977, 65th Leg., p. 1699, ch. 675, § 1, eff. June 15, 1977; Acts 1977, 65th Leg., p. 1839, ch. 735, § 2.048, eff. Aug. 29, 1977.]

Art. 7465c. Responsibility of Veterinarian Toward Animals in His Care

Sec. 1. (a) Unless otherwise provided by contract between a veterinarian and his client, a veterinarian may dispose of any animal abandoned in his care if he gives notice of his intention to do so by certified mail sent to the last known address of the client. The veterinarian must allow the client 12 days from the mailing of the certified mail in which to retrieve the animal.

(b) Contact of the veterinarian by the client by mail, telephone, or personal communication does not extend the obligation of the veterinarian to treat, board, or care for an animal unless both the client and the veterinarian agree. If no agreement is made to extend the care for the animal, the animal is considered abandoned after 12 days from the date the veterinarian notifies the client that the animal must be removed from the veterinarian's care.

(c) The giving of notice by a veterinarian as prescribed in Subsection (a) of this section does not relieve the client of his liability for payment for treatment, board, or care furnished.

Sec. 2. A veterinarian who, on his own initiative or at the request of a person other than the owner, renders emergency treatment to an ill or injured animal is not liable to the owner for damages to the animal except in cases of gross negligence. If the veterinarian performs euthanasia on the animal, it is presumed that it was a humane act necessary to relieve pain and suffering.

[Acts 1977, 65th Leg., p. 1700, ch. 676, §§ 1, 2, eff. Aug. 29, 1977.]

TITLE 130

WORKMEN'S COMPENSATION LAW

PART 1

Article

8306b. "Workmen's Compensation" Changed to "Worker's Compensation" [NEW].

PART 2

8307d. Nonsuit in Appeals from Industrial Accident Board Award [NEW].

PART 4

8309g-1. Texas Tech University Employees [NEW].

8309i. Payment of Judgments against State or Department, Division, or Political Subdivision Thereof [NEW].

PART 1

Art. 8306. Damages and Compensation for Personal Injuries

[See Compact Edition, Volume 5 for text of 1 to 7d]

Artificial Appliances

Sec. 7-e. (a) In all cases where liability for compensation exists for an injury sustained by an employee in the course of his employment where artificial appliances of any kind would materially and beneficially improve the future usefulness and occupational opportunities of such injured employee, the association shall furnish such employee with the artificial appliance or appliances needed by him for such occupational opportunities and shall continue to furnish the needed artificial appliance or appliances until a satisfactory fit is obtained in the judgment of the attending physician or physicians. The association shall also be liable for replacing or repairing any artificial appliances so furnished, when needed as determined by the physician or physicians, unless the need for such repair or replacement is due to lack of proper care by the employee. The cost of such artificial appliances so furnished to any such employee shall be in keeping with the salary or wages received by such employee.

(b) In the event the association shall fail or refuse to furnish or provide such artificial appliances, such employee shall make application to the Board for such artificial appliances. On receipt of such application the Board shall order a medical examination of the employee and obtain such other evidence as in their opinion they may deem necessary, after which

the Board shall determine whether or not the artificial appliances would materially and beneficially improve the future usefulness and occupational opportunities of the injured employee and in the event they find that such improvement would exist, then the Board shall order the association to furnish the artificial appliances.

[See Compact Edition, Volume 5 for text of 8]

Funeral Expenses

Sec. 9. If the deceased employee leaves no legal beneficiaries, the association shall pay all expenses incident to his last sickness as a result of the injury, and in addition a funeral benefit not to exceed One Thousand, Two Hundred and Fifty Dollars (\$1,250).

If the deceased employee leaves a legal beneficiary or beneficiaries, and is buried at the expense of the beneficiary or beneficiaries, or is buried at the expense of his employer or any other person, the expense of such burial, not to exceed One Thousand, Two Hundred and Fifty Dollars (\$1,250), shall be payable without discount for present payment to the person or persons at whose expense the burial occurred, subject to the approval of the Board; and such burial expense, regardless of to whom it is paid, shall be in addition to the compensation due the beneficiary or beneficiaries of such deceased employee.

[See Compact Edition, Volume 5 for text of 10 to 12b]

Subsequent Injury; Second Injury Fund

Sec. 12c. If an employee who has suffered a previous injury shall suffer a subsequent injury which results in a condition of incapacity to which both injuries or their effects have contributed, the association shall be liable because of such injury only for the compensation to which the subsequent injury would have entitled the injured employee had there been no previous injury; provided that there shall be created a fund known as the "Second Injury Fund," hereinafter described, from which an employee who has suffered a subsequent injury shall be compensated for the combined incapacities resulting from both injuries. Provided further, however, that notice of injury to the employer and filing of a claim with the Industrial Accident Board as required by law shall

also be deemed and considered notice to and filing of a claim against the "Second Injury Fund".

Permanent and Total Incapacity Through Loss of or Loss of Use of, Another Member or Organ

Sec. 12c-1. If an employee who has previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye, becomes permanently and totally incapacitated through the loss or loss of use of another member or organ, the association shall be liable only for the compensation payable for such second injury; provided, however, that in addition to such compensation and after the combination of the payments therefor, the employee shall be paid the remainder of the compensation that would be due for the total permanent incapacity out of the special fund known as "Second Injury Fund," hereinafter defined.

[See Compact Edition, Volume 5 for text of 12c-2 to 18]

Injuries Sustained Outside State; Venue

Sec. 19. If an employee, who has been hired or, if a Texas resident, recruited in this State, sustain injury in the course of his employment he shall be entitled to compensation according to the Law of this State even though such injury was received outside of the State, and that such employee, though injured out of the State of Texas, shall be entitled to the same rights and remedies as if injured within the State of Texas, except that in such cases of injury outside of Texas, the suit of either the injured employee or his beneficiaries, or of the Association, to set aside an award of the Industrial Accident Board of Texas, or to enforce it, as mentioned in Article 8307, Sections 5-5a, shall be brought either

a. In the county of Texas where the contract of hiring was made or where the employee was recruited; or

b. In the county of Texas where such employee or his beneficiaries or any of them reside when the suit is brought, or

c. In the county where the employee or the employer resided when the contract of hiring was made or when the employee was recruited, as the one filing such suit may elect.

Providing that such injury shall have occurred within one year from the date such injured employee leaves this State; and provided, further, that no recovery can be had by the injured employee hereunder in the event he has elected to pursue his remedy and recovers in the state where such injury occurred.

[See Compact Edition, Volume 5 for text of 20 to 27]

Subscriber's Filing Fee

Sec. 28. In addition to all other taxes now being paid, each stock company, mutual company, recip-

cal, or inter-insurance exchange or Lloyds Association writing Workmen's Compensation insurance in this state, shall pay annually into the General Revenue Fund in the State Treasury an amount equal to forty-five one-hundredths ($\frac{45}{100}$) of one percent (1%) of gross premiums collected by such company or association during the preceding year under workmen's compensation policies written by such companies or associations covering risks in this state according to the reports made to the Board of Insurance Commissioners as required by law. Said amount shall be collected at the same time and in the same manner as provided by law for the collection of taxes on gross premiums of such workmen's compensation insurance carriers. All self-insurers under any of the Workmen's Compensation Acts of the State of Texas shall report to the State Board of Insurance the total amount of their medical and indemnity costs for the previous year and pay a like amount of tax as provided above on said total amount of medical and indemnity costs. Failure to make any report required by this Section shall be punishable by fine not to exceed One Thousand (\$1000) Dollars and the failure to pay any tax within thirty (30) days after same is due under this Section shall be punishable by a penalty of ten percent (10%) of the amount, and shall be recovered by the Attorney General in a suit brought by him in the name of the State of Texas and such penalties when collected shall be deposited in the General Revenue Fund in the State Treasury.

Maximum and Minimum Weekly Benefits

Sec. 29.

[See Compact Edition, Volume 1 for text of 29(a) and (b)]

(c) If the annual average of the manufacturing production workers average weekly wage in Texas exceeds by Ten Dollars (\$10) the average weekly wage for those workers in 1974 as determined by the Texas Employment Commission and published in its report, "The Average Weekly Wage," the maximum weekly benefit shall be increased by Seven Dollars (\$7) and the minimum weekly benefit shall be increased by One Dollar (\$1) above the amounts specified in Subsection (b) of this section beginning with the commencement of the state fiscal year following the publication of the report. Thereafter, each cumulative Ten Dollar (\$10) increase in the average weekly wage for manufacturing production workers in Texas as annually determined and reported by the Texas Employment Commission shall cumulatively increase the maximum weekly benefit by an additional Seven Dollars (\$7) and the minimum weekly benefit by an additional One Dollar (\$1) beginning

with the commencement of the state fiscal year following the publication of the report.

[Amended by Acts 1977, 65th Leg., p. 594, ch. 210, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 756, ch. 284, § 1, eff. May 27, 1977; Acts 1977, 65th Leg., p. 1124, ch. 420, § 1, eff. June 15, 1977; Acts 1977, 65th Leg., p. 1221, ch. 470, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1861, ch. 738, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2004, ch. 801, §§ 1, 2, 4, eff. Aug. 29, 1977.]

Art. 8306b. "Workmen's Compensation" Changed to "Workers' Compensation"

Sec. 1. The term "workmen's compensation" shall hereafter be known as "workers' compensation," and references to "workmen's compensation" in the statutes of this state shall be changed to "workers' compensation" when sections of those laws are being amended for any purpose.

Sec. 2. Forms and printed materials used by any state agency which incorporate the term "workmen's compensation" shall be modified to substitute the term "workers' compensation" after the present supply of forms and materials is exhausted. State agencies, including the State Board of Insurance and the Industrial Accident Board, may promulgate reasonable rules and regulations necessary to carry out the intent of this Act.

[Acts 1977, 65th Leg., p. 154, ch. 77, §§ 1, 2, eff. Aug. 29, 1977.]

PART 2

Art. 8307. Industrial Accident Board

[See Compact Edition, Volume 5 for text of 1]

Application of Sunset Act

Sec. 1a. The Industrial Accident Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this article expires effective September 1, 1983.

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 2 to 4a]

Application of Administrative Procedure and Texas Register Act

Sec. 4b. Sections 1 through 12 of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) apply to the Industrial Accident Board. However, Section 4(a)(3) and Sections 13 through 20 of the Administrative Procedure and Texas Register Act do not apply, and Section 4(b) of that Act shall not apply to orders and decisions of the Industrial Accident Board.

Determination of Questions; Suit to Set Aside Final Ruling and Decision; Revocation of Association's License

Sec. 5. All questions arising under this law, if not settled by agreement of the parties interested therein and within the provisions of this law, shall,

except as otherwise provided, be determined by the Board. Any interested party who is not willing and does not consent to abide by the final ruling and decision of said Board shall, within twenty (20) days after the rendition of said final ruling and decision by said Board, file with said Board notice that he will not abide by said final ruling and decision. And he shall within twenty (20) days after giving such notice bring suit in the county where the injury occurred, or in the county where the employee resided at the time the injury occurred (or, if such employee is deceased, then in the county where the employee resided at the time of his death), to set aside said final ruling and decision, and said Board shall proceed no further toward the adjustment of such claim, other than hereinafter provided. In all cases of occupational diseases, for the purpose of determining venue when an appeal is effected to set aside the final ruling and decision of the Board, suit shall be brought in a court of competent jurisdiction in the said county in which the employee was last exposed to the disease alleged, prior to the manifestation of the disease, or death therefrom, or in the county in which the adverse party resides, or has a permanent place or business, or by agreement of the parties in a court of competent jurisdiction in any county in this state. Whenever such suit is brought, the rights and liability of the parties thereto shall be determined by the provisions of this law, and the suit of the injured employee or person suing on account of the death of such employee shall be against the Association, if the employer of such injured or deceased employee at the time of such injury or death was a subscriber as defined in this law. If the final order of the Board is against the Association, then the Association and not the employer shall bring suit to set aside said final ruling and decision of the Board, if it so desires, and the court shall in either event determine the issues in such cause, instead of the Board, upon trial de novo, and the burden of proof shall be upon the party claiming compensation. The Industrial Accident Board shall furnish any interested party in said claim pending in court, upon request, free of charge, with a certified copy of the notice of the employer becoming a subscriber, filed with the Board, and the same when properly certified to shall be admissible in evidence in any court in this state upon trial of such claim therein pending, and shall be prima facie proof of all facts stated in such notice in the trial of said cause unless same is denied under oath by the opposing party therein. In case of recovery, the same shall not exceed the maximum compensation allowed under the provisions of this law. If any party to such final ruling and decision of the Board, after having given notice as above provided, fails within said twenty (20) days to institute and prosecute a suit to set the same aside, then said final ruling and decision shall be binding upon all parties

thereto; and, if the same is against the Association, it shall at once comply with such final ruling and decision; and failing to do so, the Board shall certify the fact to the Commissioner of Insurance, and such certificate shall be sufficient cause to justify said Commissioner to revoke or forfeit the license or permit of such Association to do business in Texas.

Notwithstanding any other provision of this law, as amended, no award of the Board, and no judgment of the court, having jurisdiction of a claim against the association for the cost or expense of items of medical aid, hospital services, nursing, chiropractic services, medicines or prosthetic appliances furnished to an employee under circumstances creating a liability therefor on the part of the association under the provisions of this law, shall include in such award or judgment any cost or expense of any such items not actually furnished to and received by the employee prior to the date of said award or judgment. The first such final award or judgment rendered on such claim shall be res judicata of the liability of the association for all such cost or expense which could have been claimed up to the date of said award or judgment and of the issue that the injury of said employee is subject to the provisions of this law with respect to such items, but shall not be res judicata of the obligation of the association to furnish or pay for any such items after the date of said award or judgment. After the first such final award or judgment, the Board shall have continuing jurisdiction in the same case to render successive awards to determine the liability of the association for the cost or expense of any such items actually furnished to and received by said employee not more than six (6) months prior to the date of each such successive award, until the association shall have fully discharged its obligation under this law to furnish all such medical aid, hospital services, nursing, chiropractic services, medicines or prosthetic appliances to which said employee may be entitled; provided, each such successive award of the Board shall be subject to a suit to set aside said award by a court of competent jurisdiction, in the same manner as provided in the case of other awards under this law.

[See Compact Edition, Volume 5 for text of 5a to 9]

Confidentiality of Records; Fraudulent Claims or Claimants

Sec. 9a. (a) Information in a worker's claim file is confidential and may not be disclosed except as provided in this section.

(b) If there is a workers' compensation claim for the named claimant open or pending before the Industrial Accident Board or on appeal to a court of competent jurisdiction from the Board or which is the subject matter of a subsequent suit where the carrier is subrogated to the rights of the named

claimant at the time a record search or request for information is presented to the Board, the information shall be furnished as provided in this section. The first, middle, and last name of the claimant, age and social security number, and, if possible, dates of injury and the names of prior employers must be given in the request for information by the requesting party. The Board will furnish the requested information or a record check only to the following:

- (1) the claimant;
- (2) the attorney for the claimant;
- (3) the carrier;
- (4) the employer at the time of the current injury;
- (5) third-party litigants; or
- (6) the State Board of Insurance.

A third-party litigant in a suit arising out of an occurrence with respect to which a workers' compensation claim was filed is entitled to the information without regard to whether or not the compensation claim is still pending.

(c) All information of the Industrial Accident Board concerning any person who has been finally adjudicated to be a fraudulent claimant as provided in this section is not confidential and shall be furnished to any person requesting the information, notwithstanding any other provision of this law.

(d) The Board shall release to any employer with whom a person has made application for employment within the 14 days prior to the request the date of injury and nature of injury to that person if that person has had three or more general injury claims filed in the preceding five years in which weekly compensation payments have been made. The request for information shall give the name, address, and social security number of the person about whom information is sought. The Board shall release this information only if the employer has written authorization from the person about whom information is sought. The Board shall release the information by telephone, but the employer must file the written authorization with the Board within 10 days after the information is released. If the employer requests information about three or more persons at the same time, the Board may refuse to release the information except on written request from the employer and receipt of the written authorization from each person about whom the information is sought. An employer who receives the information but fails to file the authorization within the required period is guilty of a misdemeanor and on conviction shall be fined not more than \$1,000. Failure to file each authorization is a separate offense.

(e)(1) The attorney general shall promptly investigate any allegation of fraud on the part of an employer, employee, attorney, person or facility furnishing medical services authorized by Section 7 of

Article 8306, Revised Civil Statutes of Texas, 1925, or insurance company or its representative relating to any claim. In order to carry out the requirements of this section, the attorney general is vested with complete power to investigate and prosecute any and all allegations of fraudulent claim practices which may be submitted to the Board or which may be uncovered through the attorney general's own efforts. The attorney general shall cooperate with professional grievance committees, law enforcement officials, the Industrial Accident Board, and other state agencies in the investigation and prosecution of fraudulent practices. It shall be the responsibility of the attorney general to prosecute those cases in which he finds the reasonable probability that acts of fraud exist before all hearings of the Board or on appeal from the determination of such hearings.

(2) In those cases in which a claimant makes a fifth claim for compensation within any five-year period, the Board shall automatically notify the attorney general who shall investigate to determine if the probability of fraud exists in connection with the current claim or any of the prior claims.

(3) If the attorney general finds that a reasonable probability of fraud exists, the attorney general shall request a hearing and the Board shall set the matter for hearing. On the setting of this matter, the Board shall promptly notify the person under investigation, as well as the other parties involved in the case, in writing of the allegation against him and of his rights to attend and offer evidence at the hearing. This notice must be mailed by certified mail to the last known address of the person, must state the time and place for the hearing, which shall be within 45 days after determination by the attorney general that the probability of fraudulent acts exists and must notify the person of his right to counsel and his right of access to the complete Board files relating to the claim or claims under investigation. This notice shall be forwarded to the person, return receipt requested, acknowledging receipt at least 30 days before the hearing. Any investigation initiated under this section shall be concluded within 60 days unless by a unanimous vote of the Board the time is extended, which in no event may be more than an additional 60 days.

(f) In addition to the powers granted under Section 4 of this article, as amended, the Board or any member thereof has the power to compel the attendance of witnesses, take evidence, and require the production of any records in conjunction with this hearing. The person under investigation has the same power to compel the attendance of witnesses and the production of records and documents.

(g) After this hearing, the Board shall reduce its findings to writing and provide the person under investigation, as well as the other parties involved in the case, with a copy. If the Board determines that

the claimant has been fraudulent in any or all of his claims for compensation, the Board shall then classify that claimant as a fraudulent claimant, which designation is final unless appealed by the claimant as provided in this section. If the Board determines that any other person except an employer under investigation has been fraudulent in connection with a claim for compensation, the Board may exercise its authority under Section 4 of this article, as amended, or report its findings to the appropriate professional grievance committee, law enforcement officials, or other state agencies for prosecution, or both. An employer who has been adjudicated to be fraudulent shall be subject to the provisions of Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes), as if he had discriminated against an employee for filing a claim. Actions taken by the Board in accordance with this procedure may be appealed by the aggrieved person by trial de novo to a district court of competent jurisdiction in the county of his residence, whose final judgment shall be determinative of his classification as a fraudulent claimant. Appeal shall be in accordance with Section 5 of this article, as amended.

(h) Pending an investigation and hearing or appeal of allegations of fraud under this section, the Board may not approve a compromise settlement agreement or make a final award in connection with the worker's claims then pending before the Board.

(i) If any worker shall be finally adjudicated to be a fraudulent claimant, the Board may terminate any compensation which the fraudulent claimant is currently drawing and require repayment to the association of any amounts so drawn.

(j) If any worker is finally adjudicated to be a fraudulent claimant, that fact shall automatically be furnished to any employer, any insurance carrier, or any attorney for the claimant as regards all claims then pending before the Board and as regards all future claims which that claimant may thereafter file with the Industrial Accident Board; otherwise, the Board shall process the claim as generally provided under the workers' compensation law.

(k) Nothing in the preceding sections shall diminish the power of the Industrial Accident Board on its own initiative to investigate or punish fraudulent acts.

(l) This section does not give authority to withhold information from committees of the legislature to use for legislative purposes.

(m) Any information pertaining to a worker's compensation file which is confidential by virtue of any of the terms of this Act shall retain such confidentiality when released to any investigative, legislative, or law enforcement agency including the attorney general, district attorneys, grand juries, or legislative committees. Any individual who shall

publish, disclose, or distribute any such confidential information which is possessed by any investigative, legislative, or law enforcement agency to any other individual, corporation, or association not entitled to have received such information directly from the Industrial Accident Board under the provisions of this law commits an offense, and any person, corporation, or association who receives any such confidential information when such person was not entitled to have received the same from the Industrial Accident Board under the provisions of this law commits an offense. An offense under this subsection is a Class A misdemeanor. Any district court of Travis County shall have jurisdiction to enjoin possession and the use by any individual, corporation, or association of any information made confidential by this Act when such possession or use is not authorized by this Act. This subsection does not prohibit an employer from releasing information about a former employee to another employer with whom the employee has made application for employment, provided such information was lawfully acquired by the employer releasing the same.

(n) Nothing herein prohibits any person from receiving from the Industrial Accident Board all information contained in any record or file of the Industrial Accident Board begun after September 1, 1971, in statistical form and in a manner so as not to disclose the name or identity of any person, except as provided in this section.

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, their attorneys, or authorized agents of 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 12]

Settlement of Suits to Set Aside Awards

Sec. 12a. On the application of either party to a suit to set aside the award of the board, the court may approve a settlement agreement presented at any time before the jury has returned in the trial of the suit. In approving the settlement agreement, the court may either conduct a hearing on the agreement or approve it without a hearing if the claimant submits a sworn affidavit acknowledging his agreement to settle the cause of action and evidencing his full understanding of all the provisions of the settlement agreement.

[See Compact Edition, Volume 5 for text of 13 and 14]

[Amended by Acts 1975, 64th Leg., p. 1131, ch. 430, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 770, ch. 292, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1113, ch. 412, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1686, ch. 667, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.056, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2005, ch. 801, §§ 3, 5, eff. Aug. 29, 1977.]

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 3

Art. 8308. Employers' Insurance Association

[See Compact Edition, Volume 5 for text of 1 to 18]

Information to be Furnished when Employer Becomes Subscriber;
Failure to Comply; Notice; Penalty

Sec. 18a. Whenever any employer of labor in this State becomes a subscriber to this law, he or the insurance company shall immediately notify the Board of such fact, stating in such notice his name, place of business, character of the business, approximate number of employees, estimated amount of his payroll and the name of the insurance company carrying his insurance, the date of issuing the policy and the date when the same will expire, and whenever any policy is renewed that fact shall be immediately made known to the Board and the notice thereof shall contain the above facts. Such subscriber's notice shall be acknowledged by the insurance company. Any employer or association willfully failing or refusing to make any such report shall be liable for and shall pay to the State of Texas a penalty of not more than one thousand dollars for each offense. The Executive Director of the Board shall notify the Board of any willful failure or refusal to comply with this Section and after notice and hearing, the Board shall make a finding and if said finding is against the employer or association assess a penalty not to exceed one thousand dollars. The employer or association may appeal the Board's ruling de novo as provided in Section 5, Article 8307, Revised Civil Statutes of Texas, 1925, as amended. The Board's ruling if adverse to the employer or association and not appealed as provided above shall be enforced as provided in Section 5a, Article 8307, Revised Civil Statutes of Texas, 1925, as amended.

[See Compact Edition, Volume 5 for text of 19 and 20]

Notice of Cancellation

Sec. 20a. If the association cancels a policy prior to its normal expiration date, the association shall send notice of the cancellation to the subscriber by certified mail at least 10 days prior to the effective date of cancellation and to the board by certified mail or in person on or before the date of cancellation. Failure of the association to give the notice as required by this section shall extend the policy until the required notice is given to the subscriber and to the Industrial Accident Board.

[See Compact Edition, Volume 5 for text of 21 to 23]

[Amended by Acts 1977, 65th Leg., p. 889, ch. 333, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 1861, ch. 738, § 2, eff. Aug. 29, 1977.]

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]

Additional Interpretation

Sec. 6. As used in this Act and in Articles 8309g and 8309h, Revised Civil Statutes of Texas, 1925, as amended; Chapter 229, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 8309b, Vernon's Texas Civil Statutes); Chapter 310, Acts of the 52nd Legislature, Regular Session, 1951, as amended (Article 8309d, Vernon's Texas Civil Statutes); Chapter 252, Acts of the 55th Legislature, Regular Session, 1957 (Article 8309f, Vernon's Texas Civil Statutes), and other applicable provisions of the

workmen's compensation laws of this state as now or hereafter enacted or amended, wherein the terms medical aid, medical treatment, medical services, surgical treatment, surgical services, medical costs, physician, or other words of import for the limited purpose of this Act and only in this Act shall be construed to include services performed by a doctor of podiatric medicine, acting within the scope of his or her license, except in Section 13 of Chapter 310, Acts of the 52nd Legislature, Regular Session, 1951, as amended (Article 8309d, Vernon's Texas Civil Statutes); Sections 13 and 14 of Chapter 252, Acts of the 55th Legislature, Regular Session, 1957 (Article 8309f, Vernon's Texas Civil Statutes); and Sections 13 and 14 of Article 8307, Revised Civil Statutes of Texas, 1925, as amended, provided, further, nothing herein shall be construed to alter, modify, or amend the definition of the practice of medicine or who may be permitted by law to practice medicine in this state, or to allow any person not licensed by the Texas State Board of Medical Examiners to use any title, letter, syllable, word, or words that would tend to lead the public to believe such person was a physician or surgeon authorized to practice medicine as defined in Article 4510, Revised Civil Statutes of Texas, 1925, as now or hereafter amended.

[Amended by Acts 1975, 64th Leg., p. 100, ch. 42, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 79, ch. 37, § 1, eff. March 30, 1977.]

Section 2 of the 1977 Act provided:
"All laws or parts of laws in conflict with this Act are repealed to the extent of such conflict."

Art. 8309b. Texas A&M University Employees

[See Compact Edition, Volume 5 for text of 1 to 12]

Rules and Regulations; Physicians or Chiropractors for Examinations; Reports of Examinations

Sec. 13. The institution is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this Act, and the institution shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. The institution may obtain and record, on a form and in a manner prescribed by the institution, the medical history of a person to be employed in the service of the institution. The institution may designate a convenient number of regularly licensed practicing physicians, surgeons and chiropractors for the purpose of making physical examinations of persons to be employed in the service of the institution to determine who may be physically fit to be classified as "workman" as that term is defined in subsection 2 of Section 2 of this Act, and said physicians, surgeons and chiropractors so designated and so conducting such examinations shall make and file with

the institution a complete transcript of said examination in writing and sworn to upon a form to be furnished by the institution. The institution, in a form and manner prescribed by the institution, shall preserve as a part of the permanent records of the institution all reports of all such examinations and medical histories so filed with it.

Requiring Physical Examination for Certification as Workman

Sec. 14. The institution may require that no person be certified as a workman in the institution under the terms and provisions of this Act until he has submitted himself for a physical examination as provided in Section 13 herein and has been certified by the examining physician, surgeon, or chiropractor, to be physically fit to perform the duties and services to which he is to be assigned.

Certification as Workman of Person having Preexisting Disqualifying Physical Condition; Waiver of Insurance Coverage

Sec. 15. In the discretion of the institution, any person who indicates a preexisting disqualifying physical condition in a medical history provided under Section 13, or any person found to have a preexisting disqualifying medical condition in a physical examination as provided in Section 14 may be certified as a workman on the condition that such person shall execute in writing, prior to his employment, a waiver of coverage under the provisions of this Act for the preexisting disqualifying physical condition. Such waiver shall be valid and binding on the workman so executing it and, in the event of injury or death of the workman suffered in the course of his employment and attributable to the condition for which coverage was waived, no compensation or death benefits shall be paid to him or his beneficiaries.

[See Compact Edition, Volume 5 for text of 16 to 22]

[Amended by Acts 1977, 65th Leg., p. 1491, ch. 605, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 8309f. Repealed by Acts 1977, 65th Leg., p. 266, ch. 127, § 2, eff. Sept. 1, 1977

See, now, art. 8309g-1.

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.
- (2) The word "employee" shall not include:
 - (A) Persons performing personal services for the State of Texas as independent contractors or volunteers.

(B) Members of the state military forces as defined in Section 1, Article 5765, Revised Civil Statutes of Texas, 1925.

(C) Persons who are at the time of injury performing services for a political subdivision of the state or federal government, or who are controlled by an agency other than the State of Texas.

(D) Persons employed by the State Department of Highways and Public Transportation that are covered under Chapter 502, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6674s, Vernon's Texas Civil Statutes).

(E) Persons employed by The University of Texas that are covered by Chapter 310, Acts of the 52nd Legislature, 1951, as amended (Article 8309d, Revised Civil Statutes of Texas).

(F) Persons employed by The Texas A&M University System that are covered by Chapter 229, Acts of the 50th Legislature, 1947, as amended (Article 8309b, Vernon's Texas Civil Statutes).

(3) "Legal beneficiaries," "average weekly wages," and "injury sustained in the course of employment" have the meaning assigned to them in Section 1, Article 8309, Revised Civil Statutes of Texas, 1925, as amended.

(4) "Board" means the Industrial Accident Board.

(5) "Division" means the State Employees Division of the Attorney General's Office.

(6) "Director" means the director of the State Employees Division.

[See Compact Edition, Volume 5 for text of 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; Acts 1977, 65th Leg., p. 1144, ch. 433, § 1, eff. Aug. 29, 1977.]

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. 8309g-1. Texas Tech University Employees

Eligible employees of Texas Tech University, Pan Tech Farm, Texas Tech University School of Medicine at Lubbock, and other agencies under the direction and control of the board of regents of Texas Tech University are entitled to participate in the workmen's compensation program for state employees provided in Article 8309g, Revised Civil Statutes of Texas, 1925, as amended.

[Acts 1977, 65th Leg., p. 266, ch. 127, § 1, eff. Sept. 1, 1977.]

Section 2 of the 1977 Act repealed art. 8309f; § 3 thereof provided: "This Act takes effect on September 1, 1977."

Art. 8309h. Workmen's Compensation Insurance for Employees of Political Subdivisions

Definitions

Sec. 1.

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

(2) "Employee" means every person in the service of a political subdivision who has been appointed in accordance with the provisions of the article. No person in the service of a political subdivision who is paid on a piecework basis or on a basis other than by the hour, day, week, month, or year shall be considered an employee and entitled to compensation under the terms of the provisions of this article. A political subdivision may cover an elected official as an employee by a majority vote of the members of the governing body of the political subdivision. Members of a self-insurance fund created hereunder may provide coverage for themselves as well as their staff by a majority vote of such members of the fund. No class of persons who are paid as the result of jury service or an appointment to serve in the conduct of elections may be considered employees under this article unless declared to be employees by a majority vote of the members of the governing body of a political subdivision.

[See Compact Edition, Volume 5 for text of 1(3) 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 operated 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. (a) 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 redeemed 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. Provided that when an

employee's wage is offset as prescribed above, both the employer and the employee shall pay into the pension fund on the amount of money by which his wage was offset and provided further that under no circumstances shall an employee's pension benefit be reduced as a result of his injuries or any compensation received under the provision of this Act, unless such reduction is a result of a pension revision passed by majority vote of the affected members of a pension system.

(b) When benefits are offset as in Subsection (a) of Section 5 of this Act, the employer shall not withhold the offset portion of the employees wages until such time as the benefits from this Act are received.

[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; Acts 1977, 65th Leg., p. 1081, ch. 395, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1883, ch. 749, § 1, eff. Aug. 29, 1977.]

Art. 8309i. Payment of Judgments against State or Department, Division, or Political Subdivision Thereof

In all cases where the State of Texas or any department, division, or political subdivision of the state fails or refuses to comply within 30 days with a judgment against that entity under Articles 8309g and 8309h, Revised Civil Statutes of Texas, 1925, as amended; Chapter 229, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 8309b, Vernon's Texas Civil Statutes); Chapter 310, Acts of the 52nd Legislature, Regular Session, 1951, as amended (Article 8309d, Vernon's Texas Civil Statutes); Chapter 252, Acts of the 55th Legislature, Regular Session, 1957 (Article 8309f,¹ Vernon's Texas Civil Statutes); or Chapter 502, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6674s, Vernon's Texas Civil Statutes), and the workmen's compensation claimant secures mandamus that the entity comply with the judgment, the claimant is also entitled to receive an award of:

(1) the sum of 12 percent of the amount of compensation recovered in the judgment, as a penalty; and

(2) a reasonable attorney's fee for the prosecution of the mandamus action.

[Acts 1977, 65th Leg., p. 761, ch. 239, § 1, eff. Aug. 29, 1977.]

¹ Repealed; see, now, art. 8309g-1.

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, 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 certifi-

icates 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 require-

ments 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 prosecuted in any of the courts of this state pursuant to the provisions of this Act, such trials shall be de novo as that term is used and understood in appeals from justice of the peace courts to county courts. When such an appeal is filed and the court thereby acquires jurisdiction, all administrative or executive action taken prior thereto shall be null and void and of no force and effect, and the rights of the parties

thereto shall be determined by the court upon a trial of the matters in controversy under rules governing the trial of other civil suits in the same manner and to the same extent as though the matter had been committed to the courts in the first instance and there had been no intervening administrative or executive action or decision. Under no circumstances shall the substantial evidence rule as interpreted and applied by the courts of Texas in other cases ever be used or applied to appeals prosecuted under the 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 constitutional 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.

Application of Sunset Act

Sec. 26a. The State Board of Barber Examiners is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1979.

¹ Article 5429k.

[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 appel-

late 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; Acts 1977, 65th Leg., p. 1834, ch. 735, § 2.016, eff. Aug. 29, 1977.]

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.

Sec. 2.

[See Compact Edition, Volume 5 for text of 2(a) to (e)]

(f) The Texas Cosmetology Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1979.

¹ Article 5429k.

[See Compact Edition, Volume 5 for text of 3 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.

(e) Nothing herein shall require a licensed cosmetologist of this state or another state to obtain a temporary license for the purpose of participating in educational activities from which the general public is excluded.

[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.

Private Beauty Culture Schools

Sec. 27. A private beauty culture school shall:

- (1) maintain a sanitary establishment;
- (2) maintain on its staff and on duty during business hours not less than two full-time instructors licensed under this Act; except, however, the Texas Cosmetology Commission may promulgate requirements for the instructor-student ratio in cases where the student enrollment of a licensed school temporarily falls below 15;
- (3) maintain an instructor-student ratio of one instructor per 25 students or fraction thereof;
- (4) maintain a daily record of attendance of students;
- (5) establish a regular class and instruction hours, grades, and hold examinations before issuing diplomas;
- (6) require a school term of not less than nine months and not less than 1,500 hours of instruction for a complete course in cosmetology;
- (7) require a school term of not less than four weeks and not less than 150 hours instruction for a complete course in manicuring;
- (8) if offering a course of instruction qualifying a student for a wig specialist license require a school term of not less than eight weeks and not less than 300 hours instruction for a complete course in the practice of cosmetology on wigs and artificial hairpieces;
- (9) require no student to work or be instructed or receive credit for more than eight hours of instruction in any one day, or for more than six days in any one calendar week;
- (10) maintain a copy of its curriculum in a conspicuous place and verify that this curriculum is being followed as to subject matter being taught; and
- (11) submit to the executive director the name of each student within 10 days after en-

rollment in the school and notify the executive director of the withdrawal or graduation of a student within 10 days of such withdrawal or graduation.

[See Compact Edition, Volume 5 for text of 28 to 34]

Health Certificates

Sec. 35. (a) Every applicant for an original or renewal manicurist, wig specialist, operator, instructor, wig instructor, or reciprocal license shall submit a certificate of health signed by a licensed physician, showing that the applicant is free from contagious disease.

[See Compact Edition, Volume 5 for text of 35(b)]

Itinerant Shops

Sec. 36. The establishment of itinerant shops is prohibited. Any license granted under this Act shall permit the licensee to practice only in an establishment licensed under this Act or under Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929, as amended (Article 8407a, Vernon's Texas Civil Statutes), except that the Texas Cosmetology Commission may grant temporary permits to licensed cosmetologists to give demonstrations outside of a beauty salon.

[See Compact Edition, Volume 5 for text of 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 (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 54]

Hair Cleansing and Scalp Conditioning

Sec. 55.

[See Compact Edition, Volume 5 for text of 55(a)]

(b) Certification under Subsection (a) of this section shall begin not later than January 1, 1974, and the issuance of original certification shall end on December 31, 1984. There shall be no more than 100 persons certified to engage solely in the practice of cosmetology for hair cleansing and scalp conditioning at any one time.

[See Compact Edition, Volume 5 for text of 55(c) to (f)]

(g) The Texas Cosmetology Commission shall continue to renew certificates after December 31, 1984, if the certificate holder meets the qualifications prescribed by Subsection (f) of this section.

[Amended by Acts 1975, 64th Leg., p. 2144, ch. 691, §§ 28 to 47, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 946, ch. 356, §§ 1 to 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1123, ch. 419, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1685, ch. 666, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1834, ch. 735, § 2.015, eff. Aug. 29, 1977.]

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 THREE. BOXING, SPARRING, WRESTLING, ETC.

Art. 8501-1. Boxing and Wrestling Act

Short Title

Sec. 1. This Act may be cited as the Texas Boxing and Wrestling 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 the boxing and wrestling industry in this state should be regulated in order to protect the best interest of both contestants and the public, and it is the responsibility of the state to provide for the protection of the contestants and the public through the imposition of certain regulations on the boxing and wrestling industry and to impose a gross receipts tax upon the proceeds obtained from boxing and wrestling performances to finance said regulation. 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) "Commissioner" means the commissioner of the Texas Department of Labor and Standards or his designated representative.

(b) "Department" means the Texas Department of Labor and Standards.

(c) "Person" includes an individual, association, partnership, or corporation.

(d) "Professional boxer or wrestler" means a person to be licensed by the department who competes for a money prize, purse, or compensation in a boxing or wrestling contest, exhibition, or match held within the State of Texas.

(e) "Exhibition" means a demonstration of boxing or wrestling skills.

(f) "Boxing" as used in the Texas Boxing and Wrestling Act includes kickboxing, a form of boxing in which blows are delivered with any part of the arm below the shoulder, including the hand, and any part of the leg below the hip, including the foot.

(g) "Judge" means a person to be licensed by the department who is at ringside during a boxing or wrestling match and who has the responsibility of scoring the performance of the participants in the match.

(h) "Referee" means a person to be licensed by the department who has the general supervision of a boxing and wrestling match or exhibition and is present inside of the ring during the match or exhibition.

(i) "Promoter" means a person to be licensed by the department who arranges, advertises, or conducts a boxing or wrestling contest, match, or exhibition.

Enforcement Responsibility

Sec. 4. The department shall have the sole jurisdiction and authority to enforce the provisions of this Act, and the commissioner shall investigate any allegations of activity which may violate the provisions of this Act.

(a) The commissioner is authorized to enter at reasonable times and without advance notice any place of business or establishment where said alleged illegal activity may occur.

(b) The commissioner is authorized to promulgate rules and regulations and hold administrative hearings in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The commissioner shall promulgate any and all reasonable rules and regulations which may be necessary for the purpose of enforcing the provisions of this Act. The commissioner is authorized to promulgate rules and regulations governing professional kickboxing contests or exhibitions, which shall be fought on the basis of the best efforts of the contestants. The commissioner shall have the power and authority to revoke or suspend the license or permit of any judge, boxer, wrestler, manager, referee, timekeeper, second, or promoter for violations of any rule or regulation promulgated pursuant to this Act or for the violation of any provision of this Act, and he may deny an application for a license when the applicant does not possess the requisite qualifications.

(c) The commissioner shall have the power and authority to hold a hearing regarding allegations that any person has violated or failed to comply with the provisions of this Act. In addition to the denial, revocation, or suspension of a license, the commissioner may order the forfeiture of the purse of any boxer, wrestler, or manager in an amount not to exceed \$1,000 for the violation of any rule or regulation promulgated pursuant to the Act or for the violation of any provision of this Act, and said money shall be deposited to the credit of the General Revenue Fund of the State of Texas.

(d) In the conduct of any administrative hearing held pursuant to this Act, the commissioner may administer oaths to witnesses, receive evidence, and issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of papers and documents related to matters under investigation. Administrative hearings shall be held in conformity with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Judicial Review

Sec. 5. (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 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. 6. (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 person 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.

(c) Whenever it appears that any person 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 person from continuing the violation or threat of violation or for assessment and recovery of the civil penalty or for both. Venue for such suit shall be in the district courts of Travis County, Texas.

Amateur Athletic Events

Sec. 7. (a) The promoting, conducting, or maintaining of boxing and wrestling matches, contests, or exhibitions when conducted by educational institutions, Texas National Guard Units, or amateur athletic organizations duly recognized by the commissioner shall be exempt from the licensing and bonding provisions of this Act provided that none of the participants in such contests or exhibitions receive a money remuneration, purse, or prize for their performance or services therein.

(b) None of the licensing and bonding provisions of this Act shall apply to or be enforced against:

(1) all nonprofit amateur athletic associations chartered under the laws of the State of Texas, including their affiliated membership clubs throughout the state which have been recognized by the commissioner;

(2) any contests, matches, or exhibitions between students of educational institutions which are conducted by a college, school, or university as part of the institution's athletic program;

(3) contests, matches, or exhibitions between members of any troop, battery, company, or units of the Texas National Guard.

(c) When an admission fee is charged by any person conducting or sponsoring an amateur boxing and wrestling contest, match, or exhibition, except those amateur events exempted in Section 7(b) herein, the gross receipts tax hereinafter provided in Section 11 of this Act shall apply and must be paid by the sponsoring person. In addition, amateur boxing or wrestling contests wherein an admission fee is charged shall be conducted under the following conditions:

(1) The commissioner must approve the contest, match, or exhibition at least seven days in advance of the event.

(2) All entries shall be filed with the amateur organization at least three days in advance of the event.

(3) The amateur organization shall determine the amateur standing of all contestants.

(4) The amateur contest, match, or exhibition shall be subject to the supervision of the commissioner, and all profits derived from such contests shall be used in the development of amateur athletics.

(5) Only referees and judges licensed by the commissioner may participate in amateur contests, matches, or exhibitions.

(6) All contestants shall be examined by a licensed physician within a reasonable time prior to the event, and a licensed physician shall be in attendance at the ringside during the entire event.

(7) All professional boxers and wrestlers licensed under this Act are prohibited from participating in any capacity during an amateur contest, match, or exhibition.

Promoters

Sec. 8. (a) No person shall act as a promoter of either boxing or wrestling until he has been licensed pursuant to this Act.

(b) The application for a promoter's license shall be made upon a form furnished by the commissioner and shall be accompanied by an annual license fee and the license or registration fee shall be \$20 for a Boxing Promoter's License and \$20 for a Wrestling Promoter's License in a city with a population not exceeding 10,000; \$50 in cities with a population of 10,001 to 25,000, inclusive; \$100 in cities with a population of 25,001 to 100,000, inclusive; \$200 in cities with a population of 100,001 to 250,000, inclusive; and \$300 in a city above 250,001 inhabitants. The application for a promoter's license shall be accompanied by a surety bond subject to the approval of the commissioner and conditioned for the payment of the tax hereby imposed. The commissioner shall fix the sum of the surety bond, but the sum may not be less than \$300.

(c) The surety bond shall be issued by a company authorized to do business in Texas and shall be in conformity with the Insurance Code.

(d) The surety bond shall be to the state for the use by the state or any political subdivision thereof who establishes liability against a promoter for damages, penalties, taxes, or expenses resulting from promotional activities conducted within the State of Texas.

(e) The bond shall be open to successive claims up to the amount of face value, and a new bond must be filed each year. The bonding company is required to provide written notification to the department at least 30 days prior to the cancellation of the bond.

Other Required Licenses

Sec. 9. (a) No person shall act as a professional boxer or wrestler, manager of a professional boxer or wrestler, referee, judge, second, timekeeper, or matchmaker until he has been licensed pursuant to this Act.

(b) The application for a license shall be made upon a form furnished by the commissioner and shall be accompanied by an annual license fee as follows:

(1) boxer	\$10
(2) wrestler	\$10
(3) manager	\$50
(4) matchmaker	\$50
(5) judge	\$15
(6) referee	\$15
(7) second	\$ 5
(8) timekeeper	\$ 5

(c) Revenue obtained from license fees shall be deposited to the credit of the General Revenue Fund.

License Qualifications

Sec. 10. (a) The commissioner is authorized to promulgate rules and regulations setting forth reasonable qualifications for applicants seeking licenses as a promoter, manager, matchmaker, professional boxer or wrestler, judge, referee, second, or timekeeper.

(b) The commissioner may after investigation and hearing deny an application for a license when the applicant has failed to meet the established qualifications or has violated any provision of this Act or any rule or regulation issued pursuant to this Act.

Gross Receipts Tax

Sec. 11. (a) Any person who conducts a boxing or wrestling match, contest, or exhibition wherein an admission fee is charged shall furnish to the department within 72 hours after the termination of the event a duly verified report on a form furnished by the department showing the number of tickets sold, prices charged, and amount of gross receipts obtained from the event. A cashier's check or money order made payable to the State of Texas in the amount of three percent of the total gross receipts of the event shall be attached to the verified report.

(b) Any person who charges an admission fee for exhibiting a simultaneous telecast of any live, spon-

aneous, or current boxing or wrestling match, contest, or exhibition on a closed circuit telecast must possess a promoter's license issued pursuant to this Act and must obtain a permit for each closed circuit telecast shown in Texas. The three percent gross receipts tax described in Section 11(a) herein is applicable to said telecast, and the promoter shall furnish to the department within 72 hours after the event a duly verified report on a form furnished by the department showing the number of tickets sold, prices charged, and amount of gross receipts obtained from the event. A cashier's check or money order made payable to the State of Texas in the amount of three percent of the total gross receipts of the event shall be attached to the verified report.

(c) Revenue obtained by the department from the three percent gross receipts tax shall be deposited to the credit of the General Revenue Fund.

(d) The admissions tax provided in Chapter 21, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, shall not be applicable to said telecast.

Arrest and Conviction Records

Sec. 12. The Department of Public Safety shall upon request supply to the Texas Department of Labor and Standards any available arrest and conviction records of individuals applying for or holding any license under this Act.

[Amended by Acts 1977, 65th Leg., p. 815, ch. 305, § 1, eff. Aug. 29, 1977.]

Acts 1977, 65th Leg., p. 815, ch. 305, § 1, revised the Texas boxing and wrestling laws, Acts 1933, 43rd Leg., p. 843, ch. 241, classified as arts. 8501-1 to 8501-17c, by enacting the Texas Boxing and Wrestling Act.

Acts 1977, 65th Leg., p. 2136, ch. 853, § 1, amended former subsec. (a) of this article without reference to revision of the Texas Boxing and Wrestling Laws by Acts 1977, 65th Leg., p. 815, ch. 305, § 1.

Arts. 8501-2 to 8501-17c. Deleted

Acts 1977, 65th Leg., p. 815, ch. 305, § 1, revised the Texas boxing and wrestling laws, Acts 1933, 43rd Leg., p. 843, ch. 241, classified as arts. 8501-1 to 8501-17c, by enacting the Texas Boxing and Wrestling Act, art. 8501-1. See, now, art. 8501-1 and notes thereunder.

CHAPTER SIX. AUCTIONEERS [NEW]

Art. 8700. Regulation of Auctioneers

Definitions

Sec. 1. For the purpose of this Act:

- (1) "Auction" means the sale of any property by competitive bid.
- (2) "Person" means an individual.
- (3) "Property" means any property, tangible and intangible, real, personal, or mixed.
- (4) "Auctioneer" means any person who, as a bid caller, with or without receiving or collecting a fee, commission, or other valuable consideration, sells or offers to sell property at auction.

(5) "Secured party" means a person holding a security interest.

(6) "Commissioner" means the Commissioner of the Texas Department of Labor and Standards.

(7) "Licensee" means any person holding a license under this Act.

(8) "Applicant" means any person applying for a license hereunder.

(9) "Associate auctioneer" means a person who, for compensation, is employed by and under the direct supervision of a licensed auctioneer to sell or offer to sell property at an auction.

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 11 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 nonprofit organization, if the auctioneer receives no compensation;

(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 recurring basis;

(5) a foreclosure sale of realty conducted personally by a trustee under a deed of trust;

(6) a foreclosure sale of personal property conducted personally by the mortgagee or other secured party or an employee or agent of such mortgagee or other secured party acting in the course and scope of his employment if the employee or agent is not engaged otherwise in the auction business and if all property for sale in the auction is subject to a security agreement;

(7) a sale conducted by sealed bid.

(8) An auction conducted in a course of study, approved by the commissioner, for auctioneers and conducted only for student training purposes;

(9) an auction conducted by a posted stockyard or market agency as defined by the Federal Packers and Stockyard Act, 1921, as amended (7 U.S.C. Section 181 et seq.);

(10) an auction of livestock conducted by a nonprofit livestock trade association chartered in this state, if the auction involves only the sale of the trade association's members' livestock; or

(11) an auction conducted by a charitable or nonprofit organization chartered in this state, if

the auction involves only the property of the organization's members and the auction is part of a fair that is organized under state, county, or municipal authority.

License Requirements

Sec. 3. (a) Except as exempted under this Act, no person may act as an auctioneer or associate auctioneer in an auction held within this state unless he holds a license issued by the commissioner under this Act.

(b) A person is eligible for an auctioneer's license if he:

(1) is at least 18 years of age;

(2) is a citizen of the United States or a legal alien;

(3) either (i) passes a written or oral examination demonstrating his knowledge of the auction business and of the laws of this state pertaining to the auction business; or (ii) shows proof of his employment by a licensed auctioneer for a period of one year during which the applicant participated in at least five auctions.

(c) A person is eligible for an associate auctioneer's license if he:

(1) is a citizen of the United States or a legal alien; and

(2) is employed under the direct supervision of a licensed auctioneer.

(d) Each person applying for a license must apply to the commissioner on a form provided by the commissioner that establishes the applicant's eligibility for the license. The application must be accompanied by the required bond, the required license fee, and either the limited sales tax permit number issued by the comptroller of public accounts or proof of exemption from the limited sales tax permit requirement.

(e) The commissioner shall prepare license examinations for an auctioneer's license and study and reference materials on which the examinations are based. The examination for auctioneers must be designed to establish the applicant's general knowledge of the auction business, the principles of conducting an auction, and the laws of this state pertaining to auctioneers. The license examination must be offered at least four times a year at locations designated by the commissioner.

(f) A person who establishes his eligibility for an auctioneer's license may apply to the commissioner for a license examination. The application must be accompanied by an examination fee of \$25. On receipt of an examination application with the required fee, the commissioner shall furnish the applicant with study materials and references on which the examination will be based and a schedule speci-

fyng the dates and places the examination will be offered. The applicant may take the examination at any scheduled offering within 90 days after receipt of the study materials. If an applicant fails the qualifying examination, he may reapply to take the license examination again. However, if the applicant fails the examination twice within a one-year period, he must wait one year to reapply.

(g) If an application for an auctioneer's license from a nonresident of this state is accompanied by a certified copy of an auctioneer's license issued to the applicant by the county, state, or political subdivision of his residence and by proof that the county, state, or political subdivision in which the applicant is licensed has competency standards at least equivalent to those of this state, and if the county, state, or political subdivision extends similar recognition and courtesies to this state, the commissioner shall accept the license as proof of the applicant's professional competence and shall waive the examination and training requirements of Paragraph (3), Subsection (b) of this section. All other application requirements must be complied with by nonresidents, and in addition, a nonresident's application shall be accompanied by a written irrevocable consent of service of process. The consent must provide 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. The consent of service of process shall be in such form and supported by such additional information as the commissioner may by rule require.

(h) A license issued under this Act must be issued for one year, and it expires on the anniversary of issuance unless it is affected by actions resulting from a hearing conducted according to this Act or unless enjoined by actions of a court of competent jurisdiction. Any license issued under this Act may be renewed within 30 days after the expiration date on written request by the licensee and payment of the required license fee.

(i) A person licensed under this Act on the effective date of this amendment is entitled to be relicensed as an auctioneer under this Act without complying with the examination and training requirements of Paragraph (3) of Subsection (b) of this section.

Fees

Sec. 4. (a) The annual fee for each auctioneer's license issued by the commissioner is \$100. The annual fee for each associate auctioneer's license issued by the commissioner is \$50. The commissioner shall issue the license upon approval of application and receipt of payment of all license fees.

(b) 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.

Preemption

Sec. 6. No municipality or other political subdivision of this state has authority, after the effective date of this amendment, to levy or collect any license tax or fee, as a regulatory or revenue measure, or to require the licensing in any manner of any auctioneer or associate auctioneer who is licensed and complies with all applicable provisions of this Act.

Denial, Suspension, or Revocation of License

Sec. 7. (a) The commissioner may deny, suspend, or revoke the license of any auctioneer for any of the following causes:

- (1) for obtaining a license through false or fraudulent representation;
- (2) for making any substantial misrepresentation in an application for an auctioneer's license;
- (3) for a continued and flagrant course of misrepresentation or for making false promises through agents, advertising, or otherwise;
- (4) 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;

(5) 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;

(6) for violation of this act or any rule or regulation of the department; or

(7) for any violation of the Business & Commerce Code in the conduct of an auction.

(b) Before denying an application for a license or before suspending or revoking any license, the commissioner shall in all cases set the matter for a hearing and shall, at least 30 days before the date set for the hearing, notify in writing the applicant or licensee of the charges made against him or of the question to be determined, including notice of when and where the hearing will be held.

(c) The applicant or licensee is entitled to an opportunity to be present and to be heard in person or by counsel and to an opportunity to offer evidence by oral testimony, by affidavit, or by deposition.

(d) Written notice may be served by delivery of the notice personally to the applicant or licensee or by mailing the notice by certified mail to the last known mailing address of the applicant or licensee. In the event the applicant or licensee is an associate auctioneer, the commissioner shall also notify the auctioneer employing him or in whose employ he is about to enter by mailing the notice by certified mail to the auctioneer's last known mailing address.

(e) The hearing must be conducted in a manner that will give to the applicant or licensee due process of law and that is consistent with the provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(f) If, after a hearing, the commissioner determines that a license should be denied, revoked, or suspended, the applicant or licensee has 30 days in which to appeal the commissioner's decision to the district court of Travis County or of the county in which the violation is alleged to have occurred.

Investigation of Complaint; Action

Sec. 8. The commissioner may, upon his own motion, and shall, on the written and verified complaint of any person aggrieved by the actions of an auctioneer in the conduct of an auction, 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 auctioneer who advertises to hold or conduct an auction within this state shall indicate in such advertisement his name and license number.

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; Acts 1977, 65th Leg., p. 839, ch. 314, § 1, eff. May 30, 1977.]

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].

9018. Artists' Consignment Act [NEW].

9019. Interception of Communications; Civil Remedies and Criminal Penalties [NEW].

Art. 9007. Sale of Merchandise Made by Convicts or Prisoners Prohibited; Exceptions

[See Compact Edition, Volume 5 for text of 1]

Sec. 1(a). The Texas Department of Corrections is hereby authorized to contract with other states, the federal government, or foreign governments for the purpose of manufacturing and selling license plates, bedding, bedding materials, leather goods, or braille textbooks and other instructional aids for the education of blind or visually handicapped persons for the above mentioned governments. The Texas Department of Corrections is also authorized to contract with private schools and visually handicapped persons in the State of Texas for the purpose of manufacturing braille textbooks and other instructional aids for the education of blind or visually handicapped persons.

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

[Amended by Acts 1977, 65th Leg., p. 1420, ch. 577, § 1, eff. June 15, 1977; Acts 1977, 65th Leg., p. 1618, ch. 633, § 1, eff. Aug. 29, 1977.]

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 acquisition 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. 9015. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(4), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Art. 9017. Repealed by Acts 1975, 64th Leg., p. 2305, ch. 719, art. II, § 1, eff. Jan. 1, 1976

Art. 9018. Artists' Consignment Act

Sec. 1. This Act may be cited as the Artists' Consignment Act.

Sec. 2. In this Act:

(1) "Art" means a painting, sculpture, drawing, work of graphic art, pottery, weaving, batik, macrame, quilt, or other commonly recognized art form.

(2) "Artist" means the creator of a work of art or, if he is deceased, his estate.

(3) "Art dealer" means a person engaged in the business of selling works of art.

(4) "Creditor" has the meaning given that term by Section 1.201, Business & Commerce Code.

(5) "Person" means an individual, partnership, corporation, or association.

Sec. 3. A work of art delivered to an art dealer for the purpose of exhibition or sale, and the proceeds from the sale of the work by the dealer, whether to the dealer on his own account or to a third person, are not subject to the claims, liens, or security interests of the creditors of the art dealer, notwithstanding any provision of the Business & Commerce Code.

[Acts 1977, 65th Leg., p. 1530, ch. 623, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 9019. Interception of Communications; Civil Remedies and Criminal Penalties

Sec. 1. In this Act:

(a) "Communication" means speech uttered by any person and any information including speech transmitted in whole or in part with the aid of wire or cable.

(b) "Interception" means the aural acquisition of the contents of any communication through the use of an electronic, mechanical, or other device without the consent of a party to the communication. Interception does not include the ordinary use of:

- (1) a telephone or telegraph instrument, facility, or equipment;
- (2) a hearing aid designed to correct subnormal hearing to not better than normal;
- (3) a radio, television, or other wireless receiver; or
- (4) a cable system that relays public wireless broadcasts from a common antenna to one or more receivers.

Sec. 2. (a) A party to a communication may bring a civil action in a court of competent jurisdiction against any person, including a corporation or association, who:

- (1) intercepts, attempts to intercept, or employs or obtains the services of another person to intercept or attempt to intercept the communication;
- (2) uses or divulges information that he knows, or reasonably should have known, was obtained by intercepting the communication; or
- (3) in his capacity as a landlord, building operator, telephone company or other communication common carrier through its agents or employees aids or knowingly permits the actual or attempted interception.

(b) In a suit filed under this section, a person who establishes a cause of action is entitled to:

- (1) an injunction prohibiting further interceptions, attempted interceptions, or divulgence or use of information obtained by interception;
- (2) statutory damages of \$1,000;
- (3) all actual damages in excess of \$1,000;

(4) Any punitive damages the court or jury may award; and

(5) reasonable attorney's fees and costs.

(c) It shall not be unlawful for an operator of a switchboard or an officer, employee, or agent of any telephone company or other communication common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the telephone company or other communication common carrier, provided that said communication common carriers shall not utilize service observing or random monitoring except for mechanical or service quality control checks. In any civil action under this article, it shall be the burden of any defendant relying upon this defense to establish by a preponderance of the evidence that every such interception, disclosure, or use was a necessary incident to the rendition of service.

(d) It is further provided that no cause of action will arise under this section with respect to surveillance authorized under the provisions of Title 18, United States Code, Section 2516, as amended.

Sec. 3. A landlord, building operator, employee of a telephone company or other communication common carrier, or any other person who knowingly aids or permits the actual or attempted interception of communications, as defined in this Act, shall on first conviction be guilty of a Class A misdemeanor, and on second or subsequent conviction be guilty of a third-degree felony, except that no criminal liability shall arise under the provisions of this Act with respect to surveillance authorized under state or federal law.

[Acts 1977, 65th Leg., p. 1863, ch. 740, §§ 1 to 3, eff. June 16, 1977.]

TITLE 133

SAFETY

Art. 9205. Regulation and Offenses as to Fireworks

[See Compact Edition, Volume 5 for text of 1 to 3]

Counties Over 1,700,000

Sec. 3A. (a) In any county having a population of more than 1,700,000 persons according to the last preceding federal census, no person may sell or ignite the following:

(1) bottle rockets or sky rockets as defined in Subsection (2), Section 2 of this Act which do not meet the following specifications:

(A) total overall length of 15 inches or more including sticks and nose cones;

(B) casings containing propellant charge and pyrotechnic effects which are $2\frac{7}{8}$ inches or more in length and $\frac{1}{2}$ inch or more in diameter.

(b) A person who violates Subsection (a) of this section is guilty of a Class C misdemeanor.

[See Compact Edition, Volume 5 for text of 4]

License Fees

Sec. 5.

[See Compact Edition, Volume 5 for text of 5A to C]

D. An annual license fee of \$10 will be charged all retailers who possess and sell fireworks enumerated in Section 2, for which an annual retailer's

license shall be issued effective until midnight of the following 31st day of January. No person, firm or corporation shall offer fireworks for sale to individuals at retail before the 24th day of June and after the 4th day of July, or the 15th day of December of each year and after midnight of the 1st day of January of the following year.

[See Compact Edition, Volume 3 for text of 5E to G]

H. A license fee of \$17.50 for each public display shall be paid at the time of obtaining the permit, as hereafter provided, being payable to and in the manner provided in Section 5A.

[Amended by Acts 1977, 65th Leg., p. 559, ch. 195, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 1246, ch. 482, § 1, eff. June 15, 1977.]

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, amended subsecs. (3) and (9) and added subsecs. (14) to (16) of § 2a and § 5 of this article, without reference to repeal of this article by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4).

Acts 1977, 65th Leg., p. 1258, ch. 484, § 6(1), repealed the above provisions of this article, as amended by Acts 1975, 64th Leg., p. 1286, ch. 481, and, in § 1 thereof incorporated said 1975 amendments into the Parks and Wildlife Code by amending Parks & Wildlife Code, §§ 31.003(3) and (7), 31.036, and 31.042(b) and adding §§ 31.003(11) to (13) and 31.045 to 31.055.

Acts 1977, 65th Leg., p. 1973, ch. 788, which amended § 5(k) of this article, as amended by Acts 1975, 64th Leg., p. 1286, ch. 481, § 2, was repealed by § 6(7) of Acts 1977, 65th Leg., p. 1259, ch. 484. See now, Parks & Wildlife Code, § 31.048.

Acts 1975, 64th Leg., p. 108, ch. 48, § 1 amended § 24 of this article by adding a new subsec. (g), without reference to repeal of this article. 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 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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